

***Director of Public Prosecutions v Ristevski* [2019] VSCA 287 (06 December 2019) – Victorian Court of Appeal**

‘Manifestly inadequate’ – ‘Remorse’

Offence: Manslaughter

Proceedings: Crown appeal against sentence

Issues: Whether sentence was manifestly inadequate;

Whether sentence was manifestly inadequate;

- (a) failed to fix a sentence commensurate with the circumstances of the offending, giving too much weight to the lack of information about the unlawful and dangerous act;
- (b) failed to have sufficient regard to significant aggravating features when determining the nature and the objective gravity of the offending (cf the circumstances of the killing), particularly in the context of family violence and the breach of trust;
- (c) failed to have sufficient regard to the impact of the Respondent’s offending on the victims;
- (d) failed to give sufficient weight to the principles of general deterrence, specific deterrence, denunciation and just punishment;
- (e) failed to have sufficient regard to the maximum penalty for the offence; and
- (f) placed too much weight on the matters in mitigation, particularly in light of the lack of remorse, including the Respondent’s plea of guilty and prospects of rehabilitation.

Facts: The exact events surrounding the offence are unclear. What is known is that the respondent husband "killed [the victim (his wife) by unlawful and dangerous act(s); put her body into the body of her car; and disposed of [and concealed] her body in a remote location" [4]. When later questioned about his wife, the offender lied to relatives and police by claiming that she "had left the family home after they had an argument saying that she was going to clear her head" but never returned [5].

There was no evidence of earlier domestic violence in the relationship. He was convicted on his plea of guilty to manslaughter following a contested committal where the charge was murder.

Held: The offender was resentenced by majority to 13 years’ imprisonment with non-parole period of 10 years.

The sentence was held to be manifestly inadequate, with Priest JA stating the "sentence imposed on the respondent was far too low to reflect the needs of general deterrence, denunciation and just punishment". The disposal of the wife's body was treated as a significant aggravating factor and "emblematic of [the offender's] complete lack of remorse" [73]. The domestic setting of the offence was also an aggravating circumstance, with Ferguson CJ and Whelan JA providing that while "there was a time when the seriousness of such domestic violence offences was not properly recognised. That is no longer the case...[The wife] should have been able to live without any fear in her own home. It should have been a safe place for her" [10]. General deterrence and denunciation were particularly significant. These factors were not sufficiently outweighed by the offender's previous good character, prospects of rehabilitation or the utilitarian value of his guilty plea.