

***DPP v Missen* [2019] VSCA 32 (4 February 2019) – Victoria Court of Appeal**

‘Murder of parent’ – ‘People affected by substance abuse’ – ‘People with mental illness’ – ‘Sentencing’

Charges: Murder x 1.

Case type: Sentence.

Facts: The offender pleaded guilty to the murder of his father (the victim). The offence took place at the offender’s house that he occupied with the victim and his then girlfriend. The offender had an argument with the victim which erupted into a violent altercation, leading him to physically assault the victim until he was dead. Following the murder, the offender and his then girlfriend approached two men to help remove the body from the house and take it to a disused mineshaft for disposal. The offender’s relationship with his father at the time of the offending was ‘intensely troubled’; however despite the difficulties, they had a close and co-dependant bond. Further, he suffered from a range of emotional and psychological problems and was prone to drug abuse ([9], [57]).

Issue: The Court determined the appropriate sentence for the offence in the circumstances.

Held: Dixon J sentenced the offender to 21 years’ imprisonment with a non-parole period of 17 years. The offender had a limited criminal history which included contravening a family violence safety notice and offences against police ([74]). Further, he pleaded guilty late and therefore was not entitled to the same degree of mitigation as if he had pleaded guilty at the earliest possible stage. There was also delay in the finalisation of proceedings which was due to factors beyond the offender’s control. For example, his then girlfriend changed legal representation more than once, and he was also diagnosed and treated for testicular cancer. As a result of these matters, the offender had been on remand since March 2016 ([75]-[78]). Her Honour noted that he had used this time productively, having enrolled in several programs open to remand prisoners, and received training in drug education ([79]). The offender’s prospects of rehabilitation were found to be reasonable, particularly if he remained on stabilising medication and avoided illicit drugs upon release ([82]-[83]).

The objective gravity of the crime was aggravated by the way the offender continued to assault the victim when he was already severely incapacitated. It was further increased by the nature of the physical violence, together with his efforts to dispose of the body and involve other people in that conduct. The concealment of the offence meant that the victim’s relatives did not learn of his death for some time after it occurred. Regardless of the pressures that the offender may have endured, her Honour found him to be solely responsible for the victim’s death ‘in an episode of appalling brutality’ ([84]-[85]).

The offending was not premeditated but arose in circumstances of sudden rage in the context of a highly dysfunctional household. Her Honour accepted that the offender was contrite but noted that expression of sincere remorse gave way to self-interest in the aftermath of the murder. She gave weight to denunciation, just punishment, general and specific deterrence, and the need for rehabilitation. However, specific deterrence was somewhat diminished as a factor given his limited criminal history and conduct on remand ([86]-[90]).

The parties only referred to a small number of cases involving the murder of a parent, none of which were comparable to the present case. A notable feature of this case was that despite the history of conflict between the offender and the victim, he 'accepted responsibility for murdering the person [he] had come to depend on most' ([91]-[93]).