

***DPP v O'Neill* [2015] VSCA 325 (2 December 2015) – Victorian Court of Appeal**

‘Arson’ – ‘Murder’ – ‘People with mental impairment’ – ‘Physical violence and harm’ – ‘Principles in *r v Verdins*’ – ‘Sentencing’

Charge/s: Murder, arson.

Appeal Type: Crown appeal against sentence.

Facts: The male respondent and the male deceased were in a relationship. The deceased had a dominant and controlling personality while the victim was submissive and often demeaned and belittled by the deceased in public. On the morning of offence, the respondent rejected the deceased’s sexual approach and the deceased called him a ‘frigid bitch’. The respondent tried to apologise but the deceased repeated his abuse. The respondent snapped. He hit the deceased over the head with a steel pan and strangled him with a dog lead. The respondent acted as if the deceased was alive for several days before setting fire to their home with the deceased’s body inside. He acted as if the deceased had died accidentally until he was arrested.

At sentence, Dr Barth, a psychologist, provided evidence of the respondent’s psychological condition. He diagnosed the respondent as having a maladaptive personality adjustment and as suffering from pervasive feelings of worthlessness, inadequacy and insecurity. The sentencing judge accepted that the respondent’s personality disorder played some role in his offending, and therefore operated to reduce his moral culpability and to moderate to some extent the need for general and specific deterrence. A total effective sentence of 18 years imprisonment, with a non-parole period of 13 years, was imposed.

Issue/s: One of the grounds of appeal was that the sentence was manifestly inadequate.

Decision and Reasoning: The appeal was dismissed. The Court provided extensive consideration of the six circumstances identified in *R v Verdins* in which impaired mental functioning is considered relevant to the appropriate sentence to be passed on an offender (See [66]-[84] in particular). The Court rejected a purely mechanistic approach and they emphasised that careful consideration must be given to whether the evidence establishes that mental capacity has been impaired and which of the circumstances in *Verdins* are engaged. This requires rigorous evaluation of the evidence (See [68]). Here, the respondent did not establish on the balance of probabilities that he suffered from a mental impairment. As the principles in *Verdins* do not extend to personality disorders such as those relied upon, the relevant principles (in particular, the moderation of the need for general and specific deterrence, and the reduction of moral culpability) were not engaged (See [85]).

Nevertheless, the respondent's mental condition was still of some relevance to sentence, it just did not attract the level of mitigation of sentence that must be allowed where *Verdins* principles are applicable. First, the sentencing judge did not err in accepting that the respondent's personality disorder operated to moderate, to some extent, the need for general and specific deterrence. Second, the Court also held that on the evidence it was open to the sentencing judge to conclude that the murder of the deceased was not premeditated, vindictive or gratuitous but rather the result of a very complex and conflicted personality structure. In that way, the sentencing judge was correct in taking the respondent's disorder into account in making an assessment of the moral culpability of the respondent (See [99]-[100]).