

## ***Edwards v The Queen* [2020] VSCA 339 (23 December 2020) – Victorian Court of Appeal**

‘Aboriginal and Torres Strait Islander people’ – ‘Appeal against sentence’ – ‘Dysfunctional upbringing’ – ‘Female perpetrator’ – ‘Guilty plea’ – ‘History of domestic and family violence’ – ‘Manslaughter’ – ‘Moral culpability’ – ‘People affected by substance misuse’ – ‘Victim as (alleged) perpetrator’

Charges: Manslaughter x 1.

Proceedings: Appeal against sentence.

Facts: The applicant woman stabbed the male victim, her partner for just over 12 months, in the neck and he died of the injuries inflicted. The applicant pleaded guilty to one charge of manslaughter and was sentenced to 9 years’ imprisonment, with a non-parole period of 6 years and 9 months: *R v Edwards* [2019] VSC 234 (12 April 2019).

Grounds of appeal:

1. The sentencing judge erred in finding that her moral culpability was not lessened in any way by the violence perpetrated upon her.
2. The sentencing judge erred in finding that her moral culpability was high notwithstanding her severely disadvantaged background.
3. The sentence was manifestly excessive.

Held: The appeal was refused.

*Ground 1*: The sentencing judge’s finding of moral culpability was open on the evidence for the reasons she gave. This included evidence that the applicant and victim had been violent towards each other, but with the applicant as most often the aggressor; the offending took place in the context of heavy methamphetamine use; and the applicant had a traumatic childhood, and a history of controlling and abusive relationships. Had there been evidence of a causal link between the applicant’s stabbing of the victim and his acts of violence towards her, the sentencing considerations may have been quite different (at [15]-[23]).

*Ground 2:* It was well open to the sentencing judge to find that notwithstanding the applicant's severely disadvantaged background her moral culpability remained high. The applicant's offending was heavily influenced by her drug use at the relevant time (at [24]-[27]). It was also not open for the applicant to contend that her moral culpability was lessened as her offending was causally linked to her drug use. She had expressly disavowed such a causal link on the plea and the submission was not supported by the authorities (which instead related to instances where a person commits an offence to satisfy a drug addiction, relevant to moral culpability and rehabilitation) ([28]-[32]).

*Ground 3:* The sentence could not be said to be manifestly excessive. The sentencing judge gave proper consideration to all relevant features of the offending and the offender. After finding that high moral culpability was established, it was not reasonably arguable that the sentence was outside the range open to the sentencing judge given the objective seriousness of the offending ("planned and deliberate"), the maximum penalty for manslaughter, and the weight to be given to the sentencing purposes identified by the sentencing judge (particularly "just punishment, denunciation...and general deterrence") ([33]-[39]).