

***Guirguis v The Queen* [2020] VSCA 48 (13 March 2020) – Victorian Court of Appeal**

‘Appeal against sentence’ – ‘Children’ – ‘Community correction order’ – ‘Family violence’ – ‘Guilty pleas’ – ‘People affected by substance misuse’ – ‘Sexual and reproductive abuse’ – ‘Threats to kill’ – ‘Uncharged act’

Charges: Sexual assault x 1; Make threat to kill x 1

Case type: Application for leave to appeal against sentence

Facts: The applicant man and the female victim were in a relationship for 11 years and had 2 children. The relationship terminated in 2016. Before the relationship ended the applicant allegedly forced the victim to engage in oral sex (Charge 1) and, months later, told the victim that he would ‘slit her throat’ if she ever left with the children (Charge 2). The applicant also said he would ‘take [the children] out too’ which constituted an uncharged act. In 2016, an interim protection order was granted in favour of the victim and the children, and in 2017 a final intervention order was made for an indefinite period. Relevantly, the applicant had been sentenced at the Magistrate’s Court in early-2017 to 91 days’ imprisonment, combined with an 18 month Community Correction Order for other offending against the victim that occurred on the same date on which the offending giving rise to Charge 2 in the present matter occurred ([3]-[14]).

In sentencing the applicant, the judge recognised that the victim suffered profound trauma as a result of the applicant’s degrading, cruel and humiliating treatment of her. These adverse effects continuously and significantly affected her. Given the seriousness of the offending, there was a need for stern punishment to achieve general and specific deterrence and denunciation ([22]). The applicant, on pleas of guilty, was sentenced to 23 months’ imprisonment in combination with a 3-year Community Correction Order (CCO). The sentence imposed in early-2017 and time that the applicant had spent in a residential drug rehabilitation clinic were relevant to totality.

Issue: The applicant completed the term of 23 months’ imprisonment in February 2019 and sought leave to appeal on the grounds that the sentence of imprisonment followed by a 3-year CCO is manifestly excessive.

Held: The Court refused leave to appeal ([38]). The two offences constituted serious acts of family violence and the offending was not isolated ([33]). Further, a CCO was necessarily and properly punitive, and was structured towards advancing the applicant's rehabilitation and community protection ([34]). It could not be said that the decision to attach a CCO to the term of 23 months' imprisonment was clearly or wholly outside the range open to the sentencing judge, and there was no error of principle ([36]). The offending was 'grave' as the applicant's conduct towards the victim was 'cruel and degrading', 'designed to be humiliating and hurtful', and resulted in substantial trauma ([37]). The sexual assault was described as a 'humiliating and degrading act'. Further, the threat to kill was 'chilling and menacing, and had a traumatic and ongoing effect' on the victim ([33]). The conduct resulted in profound trauma.