

## **R v Skura [2004] VSCA 53 (7 April 2004) – Victorian Court of Appeal**

‘Incitement to murder’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Victim impact statements’

Charge/s: Incitement to murder.

Appeal Type: Appeal against sentence.

Facts: The female applicant pleaded guilty to a single charge that she incited Jason Dorrian, an undercover police officer, to murder her husband, the complainant. She was sentenced to seven years imprisonment, with a non-parole period of four years and six months. At trial, her husband submitted a victim impact statement that stated his forgiveness of the applicant, his desire that she return to live with the family and his willingness to offer her support to enable her to re-enter society. The sentencing judge stated that the relevance of the victim’s attitude was doubtful.

Issue/s: The sentence was manifestly excessive in light of the way the sentencing judge dealt with evidence of a number of factors including the victim impact statement of her husband.

Decision and Reasoning: The appeal was allowed, with the judges providing separate reasoning. Smith AJA stated at [48] that:

*‘So far as the attitude of the victim to the degree of sentence is concerned, that is generally irrelevant. But evidence that the victim has forgiven the offender may indicate that the effects of the offence had not been long-lasting. It may mean that ‘psychological and mental suffering must be very much less in the circumstances. Accordingly, some mitigation must be seen in that one factor’: R v Hutchinson (1994) 15 Cr App R (S) 134, 137. Where the offence occurs in a domestic situation, the attitude of the victim may also be relevant to the question of rehabilitation’.*

Here, the sentencing judge considered one aspect of the victim impact statement – the attitude of the victim and whether it could affect the sentence. His Honour did not appear to consider the impact of the crime on the victim or the relevance of the victim impact statement, and the attitude shown in it, to the question of rehabilitation. However, *‘the evidence revealed by the victim impact statement was in fact significant and, in particular, showed that there was no adverse impact on the victim’*. Further, the applicant’s prospects of rehabilitation were enhanced because of the willingness of the victim and the daughter to help the applicant deal with her serious personality disorders. Accordingly, the sentencing judge erred in failing to have regard to this relevance of the victim impact statement (See [50]).

Eames JA also held that the sentencing judge did not give sufficient weight to the victim impact statement of the applicant's husband (See [13]). His Honour stated at [12]:

*'This Court has often acknowledged that the introduction of victim impact statements has served an important purpose of ensuring that sentencing judges have a full appreciation of the consequences of criminal conduct to the victims of the crimes, thereby ensuring that judges properly weigh the factors relevant to victims which must be considered by virtue of s.5 of the Sentencing Act 1991 . The courts have also warned that the victim impact statements should not be misused so as to produce a sentence which is unfair, and that an articulate or emotional victim impact statement could not justify a sentence being imposed which was not just in all the circumstances'.*

However, while judges must ensure the contents of victim impact statements do not unbalance the sentencing process so as to cause a miscarriage of the sentencing discretion, Eames JA held that there may be many instances where the victim impact statement may have the effect of producing a more severe sentence. Likewise:

*'If a victim impact statement can have that effect in encouraging a view of the case which would justify a more severe sentence, then in my view sentencing judges ought to give equally appropriate weight to a victim impact statement where the victim positively expresses support for the accused and argues for a more lenient sentence' (See [13]).*