***Neil v R* [2019] VSCA 64 (25 March 2019) – Victorian Court of Appeal**

'Children' – 'Factors affecting risk' – 'People affected by substance misuse' – 'Physical violence and harm' – 'Sentencing'

Charges: Murder x 1.

Case type: Application for leave to appeal against sentence.

Facts: For about four months leading up to the victim's death, the applicant and the victim were in an intimate relationship. In the period leading up to the incident, the applicant, Marmo (the applicant's co-accused) and the victim were heavy ice users. On the day of the incident, the applicant was angry with the victim because she made a family violence complaint against him to police. The victim was savagely beaten by the applicant for 'snitching and dobbing' ([9]). Marmo and two other people were present. The applicant's attack on the victim escalated, and involved kicking her to the head and body with extreme force. The victim later died and the applicant and Marmo agreed that Marmo should 'dispose of her', by dumping her body down a mineshaft and then burning it using petrol ([12]). The trial judge sentenced the applicant to a term of 26 years' imprisonment, with a non-parole period of 22 years. Marmo was sentenced to a term of 24 years' imprisonment ([3]).

Issues: The applicant seeks leave to appeal against his sentence on the following grounds:

- The judge erred in applying the parity principle, for example, in that she imposed a greater sentence on the applicant than Marmo, even though the applicant pleaded guilty and Marmo pleaded not guilty, and where the applicant offered to give evidence against Marmo.
- The non-parole period is manifestly excessive.

Decision and reasoning: The Court refused the applicant's application for leave to appeal against the sentence. In determining the first ground of the appeal, the Court found nothing wrong with the trial judge's conclusions about the respective roles of the applicant and Marmo. It was the conduct of the applicant that was 'at the heart' of the horrific offending and but for his anger with, and treatment of, the victim, her death would not have occurred ([42]). The Court was also unpersuaded that the applicant's late plea of guilty required the trial judge to impose a lesser sentence than the sentence she imposed on Marmo ([43]). Overall, her Honour correctly differentiated the cases of the applicant and Marmo, and the Court therefore rejected the first ground of appeal ([44]).

The Court found that there was no substance in the applicant's second ground of appeal, that the non-parole period was manifestly excessive. The fact that the non-parole period was almost 85% of the head sentence did not indicate any error. The higher the head sentence, the higher the percentage of the head sentence the non-parole period will likely be, and often it will exceed 80% ([46]). The non-parole period was not manifestly excessive in light of the circumstances of the applicant's offending. The Court also held that the trial judge's conclusions that a lower non-parole period need not be fixed on the basis that the applicant's prospects for rehabilitation 'appear reasonable'.