

***Tedford v The Queen* [2020] VSCA 71 (26 March 2020) – Victorian Court of Appeal**

‘Application for leave to appeal against sentence’ – ‘Attempted murder’ – ‘Guilty plea’ – ‘Manifestly excessive’ – ‘Motor vehicle’ – ‘Older people’ – ‘Physical violence and harm’ – ‘Separation’ – ‘Suicide attempt’

Charges: Attempted murder x1; Reckless conduct endangering persons of serious injury x1.

Appeal Type: Application for leave to appeal against sentence

Ground: The individual sentence on Charge 2, order for cumulation, total effective sentence and non-parole period are manifestly excessive, having regard to the five-year maximum penalty for the offence, the fact that it was committed in the context of a suicide attempt, and the significant factors in mitigation, including the applicant’s early pleas of guilty, advanced age and ill health, and prior good character.

Facts: The applicant was sentenced to eight years’ imprisonment on the charge of attempted murder of his wife and two years and six months’ imprisonment on the charge of reckless conduct endangering persons of serious injury for driving his vehicle into a train. On year of the sentence or charge 2 was cumulative on the sentence for charge 1, resulting in a total effective sentence of nine years’ imprisonment.

The applicant 77 year old man and female victim were married but had separated at the time of offending, the wife moving out of the family home into a bungalow at the back of the property. On the day of offending, the applicant and victim had consumed a large amount of alcohol together and the applicant became argumentative [5]. The victim suggested the applicant see a psychologist. That evening, the applicant told a friend that he felt depressed, he needed his wife to look after him to survive and that "if anything were to happen to him, [the friend] should make sure he claimed a Holden Kingswood motor car presently garaged at the applicant’s home" [5]. Two hours later, the applicant entered the wife’s bungalow and deadlocked the door behind him before saying "I’ve got something for you" and producing a large knife [6]. He proceeded to stab the victim 13 times, including defensive injuries, mostly to the chest and arms. The applicant stated that he was going to kill both himself and the victim during the attack. The victim also suffered blunt force trauma and other lacerations before managing to escape the offender when he fell over and struck his head.

The applicant then drove away from the property. "A dash camera recorded him in a confused, angry and emotional state of mind. He expressed disbelief that he had not killed his wife [and] then discussed with himself how he could kill himself" [8]. The applicant then proceeded the drive his car into a train. "The train struck the driver’s side of the applicant’s car, pushing it for a considerable distance. No one on the train was injured" [8] and the applicant did not sustain substantial injuries.

Judgment: Leave to appeal against sentence was refused [41]. To demonstrate manifest excess "an applicant must demonstrate that the impugned sentence is 'wholly outside the range' of sentences available for that particular offence in the relevant circumstances" [29]. Likewise "arguments for excessive cumulation must fail unless an applicant can demonstrate that the order for cumulation is manifestly excessive" [30]. The sentence for the reckless conduct charge was not manifestly excessive: "[w]hilst a sentence of 50 per cent of the maximum available upon a plea of guilty to a man in the applicant's circumstances can reasonably be viewed as 'stern', we are not persuaded that it is beyond the range of sentences reasonably available to his Honour." [36] The cumulation of one year upon the base sentence for attempted murder was also not manifestly excessive. The sentence for attempted murder "represents less than a third of the maximum penalty available for what was an appalling example of domestic violence, committed with homicidal intent. Whilst old age, ill health and an almost pristine criminal history all counted in the applicant's favour, in the face of his conduct towards his wife, it could not count for a great deal" [38]. The sentence was moderate in all the circumstances. In considering the appropriate degree of cumulation the sentencing judge appropriately considered "the temporal and circumstantial relationship between the offences" and specifically considered the sentencing factors such as overall criminality, general deterrence and the principle of totality.

The court also rejected Ground 2, finding that the delay between the date of offending and the date the applicant entered a guilty plea (22 months) was a sufficient basis for the judge to entertain genuine reservations about the applicant's level of remorse, and his prospects of rehabilitation [42], despite a plea of guilty often being an indicator of genuine remorse [45].