

***DPP v Jensen* [2019] VSC 327 (17 May 2019) – Victorian Supreme Court**

‘Attempted murder’ – ‘Binge drinking’ – ‘Intentionally causing serious injury’ – ‘Sentencing’

Charges: Attempted murder x 2; intentionally causing serious injury x 1.

Case type: Sentence.

Facts: The offender had maintained an incestuous relationship with his sister since he was 17 years old, and they have a child together. While they were still living together, but after their relationship ended, his sister began an intimate relationship with the first victim. The offender, while intoxicated, entered the first victim’s house which he shared with his mother. The offender found the first victim and his sister asleep in bed together, and stabbed them both repeatedly and also stabbed the first victim’s mother who intervened. The offender pleaded guilty to 3 offences: the attempted murder of the first victim (charge 1) and his own sister (charge 2), and intentionally causing serious injury to the first victim’s mother (charge 3).

Issue: The Court determined the appropriate sentence for the offences in the circumstances.

Held: Beale J sentenced the offender to 19 years’ imprisonment, with a non-parole period of 14 years. The offender was sentenced as a Serious Violent Offender on charges 2 and 3 pursuant to the *Sentencing Act 1991*.

Notwithstanding the offender’s relative youth, good work history, limited prior convictions and guilty plea, his Honour could not accept the submission that the offender had good prospects of rehabilitation. The violence was extreme and sustained, and the offender had a history of binge drinking. Even though his intimate relationship with his sister had ended, his ability to cope with any future relationship difficulties and to control his drinking was uncertain ([48]).

The offender’s personal history is discussed at [29]-[41]. He was born in the Cook Islands and raised by his grandparents after his parents abandoned him as an infant. He moved to Australia in 2009 with his parents and his sister. Beale J noted the possibility that he would be deported from Australia at the end of his sentence. This was a relevant factor in determining the sentence ([52]).

The mitigating factors of the case were summarised at [56]-[64]. The offender had a difficult childhood which partly caused him to develop an incestuous relationship with his sister. A lack of parental supervision when they were teenagers was also found to be a contributing factor. The offender pleaded guilty at a relatively early stage, showed remorse, is relatively young, and has a limited criminal history and no violent antecedents.

Aggravating circumstances, noted at [65]-[70], were that the offending involved a ‘terrifying’ home invasion; the attack with knives was not momentary, but sustained; the offending against his sister was an instance of domestic violence given their long-term incestuous relationship; the injuries inflicted on his sister and the first victim were life-threatening; and the offender had a prior conviction for incest, which clearly did not lead him to end his intimate relationship with his sister.

A useful table of summaries of various sentencing cases in respect of attempted murder is also annexed to the judgment. In addition to these cases, his Honour also had regard to the Judicial College of Victoria Sentencing Manual’s attempted murder case collection and the Court of Appeal overview regarding intentionally causing serious injury ([54]).