

***R v Davsanoglu* [2019] VSC 332 (24 May 2019) – Victorian Supreme Court**

‘Children’ – ‘Imprisonment’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Suicide pact’

Charges: Murder x 1.

Case type: Sentencing.

Facts: The accused ‘[inflicted] his will on a woman [the deceased] by the use of fatal violence in her home’. They had maintained a relationship over several years, which ended as a result of her family’s disapproval. The deceased later remarried and had a child. The accused and the deceased later re-established their relationship, but it was ‘marked by periods of instability’ [8]. In 2017, the deceased became engaged to another man. On 13 July 2017, the accused visited the deceased’s residence, where they ‘apparently had a sexual encounter’ while her child was asleep [10]. The accused killed the deceased by holding her underwater in a bath. The accused then removed her body from the bath, partially dressed her in clothes, and placed the body in his car. He drove the deceased’s body from Melbourne to South Australia, as he intended to deposit it in the ocean. He also purchased 2 knives and inflicted superficial incisions to his wrist. The accused decided to return to Melbourne where he deposited the body in the garage of an unoccupied property that he had previously leased. He confessed to killing the deceased to his friends and family, but said that she had told him to kill her and that he had tried to kill himself. At the police station, the accused gave conflicting evidence on his feelings about the deceased’s relationships with other men.

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

Held: Lasry J inferred that the appellant’s self-inflicted injuries were not a genuine attempt to suicide, but a means of explaining his involvement in the killing by reference to a ‘suicide pact’ ([14]). By reference to *Ron Felicite v The Queen* [2011] VSCA 274, his Honour noted that the seriousness of the offending required the imposition of significant punishment ([27]). It represented the accused’s endeavour, through the use of fatal violence, to control the deceased, and to overpower her rejection of their relationship ([23]). Relevant sentencing principles included general deterrence, denunciation and just punishment. His Honour also noted aggravating circumstances, including the fact that the killing occurred in the deceased’s home while her child was asleep in the nearby room, and that he abandoned the child when he drove off with the deceased’s body ([26]).

Lasry J also considered the peculiarity of the accused's guilty plea. It was given in circumstances which made it difficult for his Honour to determine whether it was a sign of genuine remorse over the deceased's death. The accused would have derived a greater benefit had he pleaded guilty at an earlier time ([31]-[34]). Personal circumstances of the accused were also considered. He was born in Turkey, raised in an environment of domestic violence, lived in foster homes, did not receive any formal education in Australia, maintained employment since the age of 18, and had no prior convictions for violence ([35]-[37]). The accused's steady employment throughout his adulthood and lack of prior criminal convictions indicated positive rehabilitation prospects ([38]). The sentence was also determined in light of victim impact statements ([28]-[30]).

His Honour sentenced the accused to 23 years' imprisonment with a non-parole period of 18 years ([42]). He allowed some discount for the accused's guilty plea. As his Honour was not satisfied that the accused's guilty plea reflected significant remorse or acceptance of responsibility for his conduct, only a small discount was made ([44]).