

***R v Considine & Anor* [2019] VSC 386 (31 May 2019) – Victorian Supreme Court**

‘History of abuse of accused’ – ‘People affected by substance misuse’ – ‘People with disability and impairment’ – ‘Sentencing’ – ‘Strangulation’

Charges: Murder x 1.

Case type: Sentence.

Facts: The offender pleaded guilty to murdering the victim. The offender’s partner of around 9 years, Hogan, pleaded guilty to assisting him. The relationship between the offenders involved homelessness, drug use and domestic violence. In 2015, while the offender, Considine, was serving a term of imprisonment, Hogan and the victim met on Facebook and commenced an intimate relationship. When the offender was released from prison, Hogan and the victim ended their relationship, but resumed social media communication in 2017. The offender, Considine, became aware of this relationship. Considine and Hogan arranged a threesome with the victim. The offender became jealous of the sexual activity between Ms Hogan and the victim, and strangled the victim to death. Ms Hogan assisted the offender to dispose of the body.

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

Held: The offender, Considine, began consuming alcohol and taking drugs as a teenager. A forensic psychiatrist diagnosed the offender with Borderline Personality Disorder and believed that he likely had an acquired brain injury (ABI). He therefore concluded that it was likely the offender was experiencing severely impaired impulse control at the time of the offending due to his intoxication with multiple substances and Borderline Personality Disorder and probable ABI ([49]). Champion J accepted this opinion at [71]. The offender also had an extensive criminal history, however very few of his convictions involved violence ([52]). The offender’s moral culpability was reduced by various factors, including his intellectual impairment and personality disorder ([71]). The offender’s guilty plea showed a willingness to accept responsibility for the victim’s death and spared the victim’s family and friends from the traumatic effects of a contested trial ([73]). His Honour also accepted that the offender was remorseful for having killed the victim, even though this took some time to develop ([76]). The offender was sentenced to 21 years’ imprisonment with a non-parole period of 16 years ([115]).

Ms Hogan also commenced using drugs at an early age and had a minor criminal history ([56]-[57]). It was submitted that her role in the offending could not be separated from the nature of her relationship with the offender which was 'marred by domestic violence, control and drug use'. It was also submitted that these circumstances reduced her culpability ([86]). Champion J considered that her experience of domestic violence was a factor relevant to the establishment of her state of mind, and mitigated the circumstances of her offending to some extent ([90]). She also decided to cooperate with the police and offered to plead guilty at an early stage ([94]). His Honour accepted that she was genuinely remorseful for the victim's death ([96]). Ms Hogan was sentenced to one year and 10 months' imprisonment ([118]).