

## ***Director of Public Prosecutions v Linton* [2020] VCC 515 (28 April 2020) – Victorian County Court**

‘Female perpetrator’ – ‘History as victim of family and domestic violence as child’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Substance misuse’ – ‘Verdins principles’ – ‘Weapon’

Offences: Recklessly causing serious injury x 1; Possessing drug of dependence x 1

Proceedings: Sentencing

Facts: The female offender and male victim had been in a relationship that ended six months prior to the offending, but had started spending time together one to two months before the offending. One night, the offender picked up the victim from a pub and they visited the victim’s cousin’s house where they played pool and used drugs. The offender and the victim left around 2am and returned to the offender’s bungalow where an argument broke out. The offender stabbed the victim on the left side of his chest with a pair of scissors. The victim left the bungalow and called emergency services. The offender sent text messages to the victim asking him if he was alright, but the focus of the messages was very much on the offender’s own needs. The victim suffered a left haemopneumothorax, haemopericardium, a punctured lung and fluid overload, and was admitted to the ICU. The victim initially attempted to protect the offender by not telling police she was the one who caused the injuries, and the offender feigned ignorance when questioned by police, but later the victim told police what had really happened.

Judgment: The sentencing judge ordered that the offender be placed on a community corrections order for three years during which the offender was to complete 300 hours of community work and participate in rehabilitation programs for drug use and mental health issues. The judge also ordered that the offender be subject to judicial monitoring. Her Honour held that "a community corrections order can be punitive, achieve deterrence, and may be suitable even in cases of relatively serious offences such as this, which might have previously attracted a medium term of imprisonment" [72].

Her Honour held that the offender "committed a serious criminal offence with serious consequences" for the victim by inflicting an injury when the victim "had little, if any, chance to know what was happening", using a hidden weapon [19]. However, her Honour accepted that the act was impulsive, without premeditation, and that the actual consequences of the attack were "probably unintended" [20].

Her Honour emphasised the need to give significant weight to general deterrence, as the offence was committed in a domestic violence setting [21]. However, she noted several factors that impacted on the weight to be given to general deterrence in this case. Specifically, the offender's young age, the offender suffered physical and emotional abuse from her former stepfather (and witnessed her mother being subjected to this too) and older brother, the offender abused drugs, the offender had an unstable and volatile upbringing, and the offender had a long history of mental health issues. Her Honour accepted that the offender had committed to positive change and had engaged in a variety of alcohol and drug treatment programs. She also accepted that the offender had personality difficulties which, when combined with her use of ice and other drugs, resulted in difficulty thinking clearly and rationally and impaired her judgment at the time of the offence [43]. Her Honour accepted that there was therefore a basis for limited reduction to moral culpability for the offences [44].

Her Honour somewhat applied limbs 5 and 6 of the decision in [R v Verdins & Ors \[2007\] QSCA 102](#). Limb 5 refers to the existence of a condition at the date of sentencing which may mean that a given sentence would weigh more heavily on an offender than a person in normal health. Limb 6 refers to a serious risk of the imprisonment having a significant adverse effect on mental health. The judge noted the effects of the COVID-19 pandemic on the offender if she were to be imprisoned, particularly in light of her mental health issues and her strong family support base (which she would be unable to access if imprisoned).

Her Honour held that less weight needed to be given to specific deterrence and protecting the community from the offender because of her lack of criminal history. A discount was given to recognise the utilitarian benefit of the offender's early guilty plea.