



Summary of Judgment

DIRECTOR OF PUBLIC PROSECUTIONS v MATTHEW JOHN MCKAY

[2018] VSCA 292

12 November 2018

The Court of Appeal (Justices Beach, Hargrave and Almond) today allowed an appeal by the Director of Public Prosecutions against a sentence of 1 year and 6 months' imprisonment imposed by the County Court for recklessly causing serious injury. When added to other summary charges, this resulted in a total effective sentence of 1 year and 8 months, with a non-parole period of 10 months. The Court found that the sentence was manifestly inadequate and resented the respondent to a total effective sentence of 4 years and 8 months, with a non-parole period of 2 years and 6 months.

The respondent had pleaded guilty to one charge of recklessly causing serious injury, one charge of assault with a weapon and one charge of possession of a controlled weapon without excuse. The victim was a close friend of the respondent.

The respondent and victim were part of a group of friends who spent the day watching a boxing match on television and drinking alcohol. The group then went to a nearby golf course to play golf and continue drinking. The respondent began to needlessly damage the putting greens on the course, and was chastised for doing so by one of his friends – not the victim. This led to a verbal argument. The respondent then went to his car and returned to the golf course ten minutes later armed with a knife, and attempted to stab the friend that he had argued with. At this point, the victim intervened and pushed the respondent, and the respondent stabbed the victim in the left thigh. This caused major arterial and venous injuries – which were severe and life threatening – and required emergency surgery. The victim still suffers physical and psychological damage from the incident.

The respondent had a very similar prior conviction involving intoxication, a fight, leaving the scene of a fight to get a knife, returning to try and stab the person with whom he was fighting, and instead stabbing a person trying to break up the fight in the left thigh.

After the incident, the respondent voluntarily spent several months in a drug and alcohol rehabilitation facility.

The Court found that the sentence imposed was manifestly inadequate and did not reflect the gravity of the offending: 'In our view the sentence was not open even after

giving full weight to matters in mitigation and allowing a liberal discretion to the sentencing judge'.

NOTE: This summary is necessarily incomplete. It is not intended as a substitute for the Court's reasons or to be used in any later consideration of the Court's reasons. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.