



Summary of Judgment

DPP v OWEN SHEARER (A PSEUDONYM)¹

[2019] VSCA 47

12 March 2019

In June 2018, the respondent, Owen Shearer, pleaded guilty in the County Court to four charges of incest involving his step-daughter. At the time of the offending, Mr Shearer was aged between 46 and 49, and his step-daughter was aged between 11 and 14. He was sentenced to individual terms of four years' imprisonment in respect of each charge of incest, and to a total effective sentence of 8 years and 6 months' imprisonment.

Today, the Court of Appeal (Justice Whelan, Justice McLeish and Justice Weinberg) allowed an appeal by the Director of Public Prosecutions against his sentence.

The DPP argued on appeal that the individual sentences imposed on each charge of incest were manifestly inadequate (ground 1). It was also submitted that the erroneously low individual sentences resulted in inadequate orders for cumulation, therefore leading to a total effective sentence which was manifestly inadequate (ground 2).

The Court accepted the DPP's contention that the individual sentences, and the total effective sentence, were manifestly inadequate.

The Court held that the sentences imposed failed to have regard to what had recently been said by the Court of Appeal and the High Court in relation to the need for higher sentences for incest. The Court found that not only were the offences themselves egregious examples of the crime of incest, but Mr Shearer also had a lengthy criminal history which included violence against women.

The Court also considered Mr Shearer's post-offence conduct to be aggravating. The judgment of the Court highlights the numerous attempts made by Mr Shearer to persuade both his step-daughter and her mother to withdraw the allegations made against him, and to blame his step-daughter for the offending.

¹ To ensure that there is no possibility of identification of the complainant, this summary has been anonymised by the adoption of a pseudonym in place of the name of the respondent.

Mr Shearer was resentenced by the Court to individual sentences of 6 years' imprisonment in respect of each charge of incest, and to a total effective sentence of 10 years and 6 months' imprisonment. A non-parole period of 7 years and 6 months was set.

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.