



Summary of Judgment

DIRECTOR OF PUBLIC PROSECUTIONS V JAMIE EVAN MACARTHUR

[2019] VSCA 71

8 April 2019

The Court of Appeal (Chief Justice Ferguson CJ, Justice Kaye and Justice Weinberg) today allowed an appeal by the Director of Public Prosecutions against sentences imposed on Jamie Evan Macarthur in respect of charges for rape and attempted rape on the ground that the sentences were manifestly inadequate. Macarthur pleaded guilty, in the County Court, to 18 charges of common assault, one charge of theft, one charge of rape, and two charges of attempted rape. Macarthur was sentenced to a total effective term of seven years and nine months' imprisonment with a non-parole period of five years. The Court of Appeal has increased that sentence to a total effective term of nine years and nine months' imprisonment with a non-parole period of six years and four months.

Fourteen of the offences were committed by Macarthur during the afternoon of 15 March 2017. He was under the influence of alcohol and assaulted a number of members of the public. Macarthur was arrested by police and locked up in a police station cell until he was sober.

The other eight offences were committed by Macarthur early in the morning of 16 March, after he was released from police custody. Macarthur came across the victim at a tram stop in the city. When the victim rejected his advances, he forced her to walk with him, and followed her onto a tram. The victim was frightened of Macarthur so she attempted to placate him. She got off the tram when it stopped outside a hospital and made her way to the entrance to the building. Macarthur followed the victim. As she was attempting to enter the hospital, he pushed her into a corner of the entry alcove, pulled up her dress, and penetrated her vagina with his fingers (charge of rape). He continued to kiss and touch her, placed her in a headlock and dragged her around the hospital alcove, ultimately forcing her onto her back on the hand railing (charge of common assault). He again pulled up her dress, forced her further backwards over the railing and attempted to force his fingers into her vagina (first charge of attempted rape). He then turned her around and attempted to penetrate her vagina with his fingers from behind (second charge of attempted rape). Macarthur then dragged the victim onto the street and kicked her in the legs as she lay on the ground (charges of common assault). The victim managed to run into the hospital, however Macarthur followed her again. He eventually left the hospital, attempting to kick a security guard and grab the victim in the process (charges of common assault).

As noted above, Macarthur was sentenced to a total effective term of seven years and nine months' imprisonment with a non-parole period of five years. He was sentenced to five years' imprisonment in respect of the charge of rape and 4 years 6 months' imprisonment in respect of each of the charges of attempted rape. The rape charge was designated as the base sentence (5 years) and orders for cumulation of a year were made in respect of each of the charges of attempted rape.

The Court accepted the Director's submissions that the offending contained a number of aggravating features including that the offending was predatory and persistent, it was protracted and included a completed offence and two attempted offences, the victim was vulnerable, the offending took place despite the victim's protests and resistance, Macarthur was on bail at the time of the offending, the offending degraded and humiliated the victim and as a consequence of it she suffered both physical and mental injury. While the Court acknowledged certain factors in mitigation, including Macarthur's early guilty plea (so that the victim did not have to endure a trial and give evidence), genuine remorse, and a disadvantaged background, the Court held that the sentencing judge was correct in characterising the offending as being 'very serious examples' of the charges of rape and attempted rape. The Court also noted the views expressed by the Court of Appeal in *Shrestha v The Queen* [2017] VSCA 364, that the 'general run' of sentences for digital rape is well below what is necessary to reflect the objective seriousness of that offence and that there must be an 'upward adjustment' in sentences for offences of digital rape.

The Court of Appeal re-sentenced Macarthur to six years' and six months imprisonment in respect of the charge of rape and five years and six months' imprisonment in respect of the first charge of attempted rape. The Court directed that 18 months of the sentence imposed on the attempted rape charge be served cumulatively on each of the other sentences imposed by the sentencing judge. Consequently, Macarthur was re-sentenced to a total effective term of nine years and nine months' imprisonment with a non-parole period of six years and four months.

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.