



Summary of Judgment

DPP v LEONARD BETRAYHANI *LEONARD BETRAYHANI v THE QUEEN*

[2019] VSCA 150

26 June 2019

The Court of Appeal (President Maxwell, Justice Beach and Justice Niall) today allowed an appeal by the Director of Public Prosecutions against a sentence of 4 years' imprisonment, with a non-parole period of 3 years, imposed by the County Court for recklessly causing serious injury. The Court found that the sentence imposed in the County Court was manifestly inadequate, and resentenced Mr Betrayhani to a sentence of 7 years, with a non-parole period of 5 years.

The Court also refused an appeal against conviction brought by Mr Betrayhani.

Mr Betrayhani was found guilty by a County Court jury of one charge of recklessly causing serious injury. The offending occurred late on a Saturday evening, outside a hotel in Apollo Bay. The victim was standing on the footpath when Betrayhani punched him to the head. The punch caused the victim to fall backwards, striking his head on the footpath.

The trial judge described the punch as 'a cowardly king hit, which gave [the victim] no time to protect himself'. He suffered serious head injuries, which required emergency surgery, and he has been left with a permanent brain injury and associated, permanent cognitive changes. He requires assistance from his son with all of the activities of daily life.

In refusing leave to appeal against conviction, the Court said that it was open to the jury to be satisfied that, when he punched the victim, Mr Betrayhani realised that serious injury would probably result.

The Court said that 'a forceful punch to the head is highly dangerous and a person delivering such a punch is taken to have foreseen a high probability of serious injury'. The impact on the victim was a key consideration in the Court's re-sentencing of the offender. The Court described the injuries to the victim as 'catastrophic':

When Betrayhani's foresight and the seriousness of the consequences are taken together, this must be adjudged a very serious instance of recklessly causing serious injury.

The Court said that general deterrence was of considerable importance in cases involving random street violence. The Court repeated the concern stated in *Director of Public Prosecutions v Cook*¹ that '[v]iolence in the context of physical fights and assaults at or near

¹ (2004) 141 A Crim R 579.

places like hotels, bars and clubs seems to have become more prevalent in the community in recent times'. And further

[u]nexplained, unprovoked, violence of this character occurring in a hotel towards an innocent and unsuspecting member of the public is conduct which demands considerable weight be given to general deterrence.

It was a matter of real significance, the Court said, that Betrayahani had a history of committing assault-related offences, including an earlier conviction for recklessly causing injury.

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 full reasons for judgment.