



Summary of Judgment

Karl Hague v The Queen [2019] VSCA 218

3 October 2019

Following a trial in the Supreme Court of Victoria, Karl Hague was convicted of the murder of Ricky Balcombe. He was sentenced to a term of 26 years' imprisonment, with a non-parole period of 20 years.

Today, the Court of Appeal (Chief Justice Ferguson, Justice Niall and Justice Weinberg) dismissed applications brought by Mr Hague for leave to appeal against both conviction and sentence.

Ricky Balcombe was stabbed to death in a shopping centre in Geelong on 5 May 1995. He was 16 years old. The applicant was charged with his murder in 1997. That prosecution did not proceed beyond committal. However, in 2017, he was directly presented for trial by the Director of Public Prosecutions.

The prosecution case was that the applicant murdered Ricky Balcombe in revenge for an attack on the applicant that had taken place a fortnight before the murder. The prosecution relied on an eye witness to the killing and the evidence of other witnesses to the effect that the applicant had been in the shopping centre at about the time of the murder. The applicant denied having been at or near the shopping centre at the relevant time.

The applicant sought leave to appeal against his conviction on three grounds. On the first ground, he contended that the prosecution should have been permanently stayed because the evidence was weak, inconsistent and unreliable. On the second ground, he argued that the verdict of the jury was unreasonable or could not be supported, having regard to the evidence. In support of the third ground, he sought to rely on fresh evidence which he submitted showed that another person had confessed to Balcombe's murder.

The Court of Appeal accepted that there were problems with many of the prosecution witnesses. A number of the witnesses were engaged at the time, and had since been engaged in criminal behaviour of varying degrees of seriousness. Many gave different or incomplete accounts. A number refused to cooperate with police, at least in the initial stages of the investigation. Further, the lengthy delay in the trial meant that a number of witnesses were no longer available to give oral evidence, and accordingly, their statements were read to the jury. Clearly, the passage of time had affected the memories of some witnesses on matters of detail.

However, the Court of Appeal concluded in respect of Ground 1 that there was no power for a trial judge to grant a permanent stay merely because the prosecution case is seen as 'weak or tenuous.' As regards Ground 2, the Court was satisfied that, when the evidence was considered as a whole, the prosecution case had been a strong one. The Court was not left in

doubt as to the correctness of the jury's verdict.

The Court rejected the application to receive fresh evidence. This was because the evidence upon which the applicant relied, including the evidence that another person had subsequently confessed to Balcombe's murder, did not meet the threshold requirement that a jury, acting reasonably, might be prepared to accept the evidence, and act upon it. The Court concluded that the evidence lacked credibility. If the evidence were to be placed before a jury, there was no 'significant possibility' that it would affect the outcome of the trial. Accordingly, the fact that this evidence might now be available did not mean that the applicant had, by having been convicted, suffered a substantial miscarriage of justice.

On the sentence appeal, the Court noted that this was a serious example of murder. It was a revenge killing. Although the Court accepted that the applicant had not sought out the victim on the particular day, the attack itself was not entirely spontaneous.

The Court accepted that the applicant was, at 21, a young man at the time of the murder. It noted, however, the sentencing judge's observation that there were significant doubts as to his prospects of rehabilitation. In the circumstances, the Court was not persuaded that the sentence was manifestly excessive.

Mr Hague will continue to serve his prison term of 26 years. He will remain eligible to apply for parole after he has served 20 years of his sentence. Whether Mr Hague will be released on parole will be a matter for the Adult Parole Board, not the Courts.

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.