



## Summary of Judgment

### *DIRECTOR OF PUBLIC PROSECUTIONS v SMITH [2019] VSCA 266*

**21 November 2019**

The Court of Appeal (Justice Kyrou, Justice Kaye and Justice T Forrest) today allowed an appeal by the Director of Public Prosecutions against a total effective sentence of 7 years and 6 months' imprisonment imposed on the respondent, who pleaded guilty to three charges of causing injury intentionally, and two summary charges of contravening a family violence intervention order. He was also convicted by a jury of single charges of false imprisonment, making threat to kill and rape.

The respondent and the complainant were in a de facto relationship for some years prior to the offending. There is a history of violent behaviour by the respondent towards the complainant. At the time of the offending, the respondent was subject to a family violence intervention order, which listed the complainant as the protected person. The offending occurred on three separate occasions.

On the first occasion, the respondent struck the complainant over the head, dragged her by the hair and refused to let her leave the house for three days until she escaped. On the second occasion, the respondent punched the complainant in the face, stomped on her head, dragged her by the hair and threw her to the floor. On the third occasion, the respondent struck the complainant with his fists and a metal bar while saying that he was going to kill her, forcibly removed her dentures and broke them in half, dragged her into the shower, undressed her, grabbed her breasts violently, attempted to cut her throat with a razor, and placed a metal pole under her chin and lifted her off the ground. Shortly after this, the respondent penetrated the complainant's vagina with his penis. The complainant's injuries were extensive.

The County Court sentenced the respondent to 6 years' imprisonment for the main offence of rape. He was sentenced to 9 months' imprisonment each for two of the charges of intentionally causing injury, and 3 years and 6 months' imprisonment for the third charge of intentionally causing injury. He was sentenced to 15 months' imprisonment for false imprisonment, 12 months' imprisonment for making threat to kill and 3 months for each of the two summary charges of contravening a family violence intervention order. Orders for cumulation resulted in the total effective sentence of 7 years and 6 months' imprisonment, and a minimum term before parole eligibility was fixed at 5 years.

The Court of Appeal upheld the Director's appeal on the basis that individual sentences, the orders for cumulation, and the total effective sentence imposed were each manifestly inadequate because they failed to reflect the gravity of the offending and the respondent's high moral culpability. The Court held that the respondent's mitigatory factors, including his dysfunctional upbringing, low cognitive function and acquired brain injury, operated to

somewhat moderate his extremely high moral culpability. The Court stated that in the context of domestic violence, there is a particular need for both specific and general deterrence:

In our view, there was a need for both specific and general deterrence to receive real prominence in the sentencing mix. The respondent's general history of violence and specific history of violence towards the complainant called for this. Further, those considering similar brutal, degrading abuse of a domestic partner must understand that the courts have a duty to protect vulnerable members of our community and will not hesitate to impose stern punishment upon wrongdoers. In 2014, this Court sent out what it hoped would be an unequivocal message to would-be perpetrators of domestic violence — that if they offended, they would be sentenced to lengthy terms of imprisonment. The sentence we are about to impose follows through on that message.<sup>1</sup>

The Court resentenced the respondent to 7 years and 6 months' imprisonment for rape, 15 months' imprisonment each for two of the charges of causing injury intentionally, and 5 years' imprisonment for the third charge of causing injury intentionally. It affirmed the other sentences. Orders for cumulation resulted in a total effective sentence of 10 years and 6 months' imprisonment. The Court fixed a non-parole period of 8 years.

---

**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.

---

<sup>1</sup> *DPP v Smith* [2019] VSCA 266, [35] (citation omitted).