



Summary of Judgment

DIRECTOR OF PUBLIC PROSECUTIONS v WOL [2019] VSCA 268

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 5 years and 3 months' imprisonment imposed on the respondent who pleaded guilty to single charges of aggravated home invasion, common assault, prohibited person possessing a firearm and conspiracy to steal.

The respondent and two co-offenders, all of whom wore disguises, entered the victims' home by kicking in the front door at around 1:50 am on 2 November 2017. Their purpose was to steal a particular type of vehicle located at the premises. The respondent, who was then aged 18, was carrying a loaded firearm and discharged it in the presence of one of the occupants. The terrifying nature of the home invasion was evident from the images of the offenders breaking into the home and the victims' hysterical screams that were captured on the home CCTV system.

The County Court sentenced the respondent to 4 years and 6 months' imprisonment for the main offence of aggravated home invasion. He was sentenced to 9 months for the common assault, 12 months for possession of the firearm and 4 months for the conspiracy to steal. All but 9 months of these three sentences were ordered to be served concurrently with the sentence for the aggravated home invasion. The County Court fixed a non-parole period of 3 years and 6 months.

The Court of Appeal upheld the Director's contention that these sentences and the non-parole period were manifestly inadequate because they failed to reflect the gravity of the offending and the respondent's very high moral culpability. The Court acknowledged that the respondent was entitled to moderation of his sentence due to his plea of guilty but stated that the weight to be given to his youth was diminished by the seriousness of the offending and the need to protect the community. The Court stated that specific deterrence was important because of the respondent's extensive criminal history in the Children's Court, including for eight charges of aggravated burglary and four charges of armed robbery.

The Court resentenced the respondent to 6 years and 6 months' imprisonment for aggravated home invasion, 18 months for common assault, 12 months for possession of the firearm and 4 months for conspiracy to steal. The Court made orders for concurrency in respect of the final three charges, which resulted in a total effective sentence of 7 years and 6 months' imprisonment. The Court fixed a non-parole period of 5 years and 3 months.

The Court explained the need for these higher sentences as follows:

In our opinion, the significantly higher sentences and non-parole period ... are necessary to fully reflect the gravity of the respondent's offending, his high moral culpability and the need to protect the community and deter the respondent, his co-offenders and others in the community who may be minded to commit this type of abhorrent offending. This is particularly so in relation to the offence of aggravated home invasion which strikes fear into law abiding citizens who are entitled to feel safe in their own homes. As the sentence of 6 years and 6 months' imprisonment we have imposed on the respondent demonstrates, those who contemplate committing the offence of aggravated home invasion will forfeit their right to live freely in the community for a very long time if they are caught.¹

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.

¹*DPP v Wol* [2019] VSCA 268 [79].