



## Summary of Judgment

*Director of Public Prosecutions v Ristevski* [2019] VSCA 287

6 December 2019

The Court of Appeal (Chief Justice Ferguson, Justice Whelan and Justice Priest) today allowed the Director of Public Prosecution's ('DPP') appeal against Borce Ristevski's sentence for manslaughter.

Mr Ristevski's sentence of nine years' imprisonment with a non-parole period of six years was set aside. By majority (Ferguson CJ and Whelan JA) he was resentenced to 13 years' imprisonment with a non-parole period of 10 years.

### Background

On the morning of 29 June 2016, Mr Ristevski killed his wife of 27 years, Karen Ristevski, in their family home. A short time after the killing he put Ms Ristevski's body in the boot of her car and drove from the house, searching for a remote place to dispose of it. This led him to Macedon Regional Park. There, he carried or dragged Ms Ristevski's body to a spot some 66 metres from the road and hid it beneath logs and branches. He also disposed of her mobile phone, handbag and wallet.

Mr Ristevski then embarked on an elaborate course of deception. He claimed Ms Ristevski had left the family home that morning to 'clear her head' after an argument. He participated in a media conference in which he comforted his visibly distressed daughter. He repeatedly misled police about his and Ms Ristevski's movements on the day she died.

In February 2017 Ms Ristevski's body was discovered. The cause of her death could not be determined due to the body's advanced state of decomposition. Mr Ristevski acted as a pallbearer at Ms Ristevski's funeral, in the full knowledge that he had killed her. The circumstances in which she died and the cause of her death remain unknown.

Almost 18 months after the killing Mr Ristevski was arrested and charged with Ms Ristevski's murder. After being committed to stand trial for murder, he offered to plead guilty to manslaughter. The DPP rejected the offer.

In March 2019, as the murder trial was about to begin, the trial judge ruled that the DPP could not rely on certain aspects of Mr Ristevski's post-offence conduct to prove that he had intended to kill Ms Ristevski. Following this, the DPP accepted Mr Ristevski's plea to manslaughter. In this case, the basis of the charge of manslaughter was that Ms Ristevski had been killed by her husband by an act (or acts) that were unlawful and dangerous.

On 18 April 2019 Mr Ristevski was sentenced to nine years' imprisonment with a non-parole period of six years.

## Appeal

Priest JA, writing separately, observed that the sentencing judge's attempt to determine where in the range of seriousness the offending fell had not been productive. It was impossible to reach any conclusion as to the level and duration of Mr Ristevski's unlawful act (or acts) of violence that had caused Ms Ristevski's death.

In Priest JA's view, it could be said that Mr Ristevski assaulted Ms Ristevski in a domestic setting where a reasonable person in the same circumstances would have realised that the assault carried with it an appreciable risk of serious injury to her. What could not be said, however, was that Ms Ristevski's death was anything other than an unintended consequence of the assault. By abandoning the murder charge, the DPP accepted that Mr Ristevski did not intend to kill or cause really serious injury to Ms Ristevski. As a consequence, he was not to be sentenced for murder.

Priest JA found that Mr Ristevski's disposal of his wife's body was a significant aggravating feature of his offending, which also demonstrated his complete lack of remorse. While Mr Ristevski's lack of remorse did not aggravate his offending, its absence meant it could not be taken into account as a mitigating factor. Mr Ristevski's total lack of remorse was also reflected in his failure to explain how Ms Ristevski died and the lies he told after the offence.

The fact that the killing occurred in a domestic setting was, in Priest JA's view, a further aggravating feature of the offence. His Honour said it could be inferred that Mr Ristevski must have thought that the circumstances of the killing were sufficiently serious to warrant disposing of his wife's body to conceal how she died. At the same time, Mr Ristevski was entitled to (and did) rely in mitigation on his previous good character and prospects of rehabilitation, as well as on the utilitarian benefits of his guilty plea.

Priest JA considered the head sentence (of nine years) and non-parole period (of six years) to be inadequate to reflect the seriousness of the offending. He found that the Court's intervention was required to maintain proper sentencing standards.

In a joint judgment, Ferguson CJ and Whelan JA agreed with Priest JA's reasons for allowing the appeal. Their Honours said the case exemplified why sentences must always be determined based on the particular circumstances of the case, and why sentences imposed in other cases must not be taken as precedents.

Their Honours observed that there were no truly comparable cases to this one. This case was atypical. There was no evidence of earlier domestic violence or serious discord. There was also no evidence of a highly emotionally charged or volatile environment of the type often seen in domestic killings. And there was no apparent reason for, or context to, what Mr Ristevski did.

It was accepted by Mr Ristevski on both the plea hearing and before the Court of Appeal that his post-offence conduct significantly aggravated his offending. The Chief Justice and Whelan JA observed that Mr Ristevski did not simply maintain his right to silence, but took immediate positive steps to avoid his crime being discovered. This included concealing Ms Ristevski's body and engaging in an elaborate course of deception.

The fact that the killing took place in a domestic setting also aggravated the offence. Ms Ristevski should have been safe in her own home. In the circumstances, general deterrence and denunciation were particularly important.

Their Honours took into account Mr Ristevski's previous good character, the benefits of his plea, and his prospects of rehabilitation, which the DPP acknowledged were good. As Mr Ristevski had not shown 'one scintilla' of remorse, their Honours could not take remorse into account as a mitigating factor. Their Honours emphasised the need to sentence Mr Ristevski for manslaughter, not murder.

Mr Ristevski's sentence was set aside. The Court of Appeal, by majority (Ferguson CJ and Whelan JA), resented Mr Ristevski to 13 years' imprisonment with a non-parole period of 10 years. Priest JA, in the minority, would have resented Mr Ristevski to 12 years' imprisonment with a non-parole period of nine years.

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**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.**