



Summary of Judgment

Mick Mush v The Queen [2019] VSCA 307

18 December 2019

The Court of Appeal (President Maxwell and Justice Kaye) today refused leave to appeal against a sentence of 19 years' imprisonment with a non-parole period of 15 years, imposed for repeated acts of rape and sexual assault on a single victim.

The offender broke into the victim's home in the early hours of the morning and, over a period of two hours, used force and violence in subjecting her to protracted sexual abuse. The offending occurred in 1985 but it was not until 2014 that improvements in DNA technology enabled the offender to be identified.

The Court agreed with the sentencing judge that the offending was extremely serious and that the sentence needed to reflect the separate criminality involved in each act of abuse.

The Court said:

... On each occasion on which the applicant offended during the incident, he committed an offence that was the product of a conscious, deliberate choice by him to engage in that conduct. Throughout the episode he used his victim as the object of his sexual pleasure and gratification. He persisted until he had achieved the gratification that he sought. Throughout the whole incident he showed no concern whatsoever for the harm and cruelty that he was inflicting on his victim.

As the victim impact statement of FH graphically illustrates, the offences committed by the applicant were calculated to, and did, cause severe and lasting emotional, psychological and physical pain to FH. The applicant, by his offending, has, in a material respect, destroyed an important and irreplaceable part of FH's life. That type of harm inflicted by him is irreparable. For his own degraded purposes he took that part of her life from her.

The offences committed by the applicant, individually, and collectively, struck at the most basic norms and values of a civilised and decent society. On any view of the facts, the applicant's offending from an objective point of view must be characterised as being extremely serious. As we have noted, the applicant was not able to rely on any relevant factor relating to his psychological status or his background, which could in any way have mitigated the very high level of his moral culpability.¹

¹ Reasons [76]–[78].

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.