



Summary of Judgment

PETERS v THE QUEEN [No 2]

[2019] VSCA 292

10 December 2019

The Court of Appeal (President Maxwell, Justice Kaye and Justice McLeish) today refused an application by James Peters for an extension of time in which to apply for leave to appeal against conviction.

Peters was an anaesthetist who had hepatitis C. In full knowledge of his own infection status, he repeatedly stole syringes of the drug fentanyl from the operating theatre, injected himself and then re-used the same syringe on his patients. 55 of his patients were infected with hepatitis C as a result. Of those, about eight to ten tested positive for hepatitis C antibodies but negative for the virus itself, meaning that by the time of testing they had ‘cleared’ the virus.

In November 2012 Peters pleaded guilty to 55 charges of negligently causing serious injury. He was sentenced to a total effective sentence of 14 years’ imprisonment. A non-parole period of 10 years was fixed. An appeal against sentence was dismissed in 2013.

Peters sought leave to appeal against conviction out of time on two bases: first, that infection with hepatitis C virus, without more, did not constitute a ‘serious injury’; second, that there is fresh evidence of new treatments for hepatitis C with a close to 100 per cent success rate.

The Court held that to infect a person with a disease constitutes the causing of injury, irrespective of whether physical symptoms have been manifested. That some of the victims will not develop symptoms does not alter the fact that, when they were infected, they suffered injury.

Seriousness of an injury is to be assessed at the time of injury, by reference to the seriousness of the potential consequences. It would have been well open to a jury to find that infection with the hepatitis C virus constituted a ‘serious injury’, given the potential adverse consequences of the disease. This was so irrespective of the prospects of successful medical treatment.

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.