



## Summary of Judgment

### *Todd v The Queen* [2020] VSCA 46

12 March 2020

The Court of Appeal (Chief Justice Ferguson, Justice Priest and Justice Beach) today refused an application for leave to appeal by Jaymes Todd (‘the applicant’) from his sentence for the murder of Eurydice Dixon who was a 22 year old aspiring and talented comedian.

#### **Background**

On the evening of 13 June 2018, Ms Dixon performed at the Melbourne International Comedy Festival. Later that night, the applicant fatally attacked Ms Dixon in Princes Park, Carlton, after stalking her as she walked from the city to her home.

The applicant pleaded guilty to murder, rape, attempted rape and sexual assault. At the plea hearing, the Court heard that the applicant has a sexual sadism disorder involving a currently untreatable underlying paraphilic interest. This disorder was the main cause of his offending. The applicant, who was 19 at the time of the murder, was sentenced to life imprisonment with a non-parole period of 35 years.

#### **Appeal**

The applicant sought leave to appeal from his sentence for murder, on the basis that:

- the life sentence and non-parole period were ‘manifestly excessive’ because they were too long; and
- the sentence of imprisonment was disproportionate to the crimes he had committed.

#### *Manifest excess*

There were many mitigating factors that were taken into account in favour of the applicant: his youth; his lack of a criminal history; his admission of guilt and plea of guilty; his remorse; his mild autism spectrum disorder; that he had been and would continue to be held in protective custody; his dysfunctional home setting and his background of behavioural difficulties.

A court must not impose a sentence that is more severe than what is necessary to achieve the purpose for which the sentence is imposed. This is called the principle of parsimony. The applicant’s argument was that if the mitigating factors been properly taken into account in his favour and assessed in light of the objective seriousness of the offending, a sentence less than life imprisonment with a non-parole period of 35 years should have been imposed.

The Court did not accept this. The Court found that the sentencing judge had carefully weighed all relevant mitigating factors together with other competing sentencing considerations such as

denunciation, community protection and general and specific deterrence. After weighing the relevant sentencing considerations, life imprisonment with a non-parole period of 35 years was within the range of options available to the sentencing judge.

The Court described the applicant's conduct as 'unspeakably loathsome and cruel' and went on to state:

A young woman should be able to walk home alone after a night out without any fear of being harmed, let alone subjected to a vile sexual attack and killed. She should not have to be looking over her shoulder to see if anyone is following her. Her heart should not have to skip a beat when she hears approaching steps from behind. Tragically, this case shows that women still cannot have confidence that they can walk in public places at night without potentially attracting the attention of predators.

The Court noted that it was very important for the applicant to be punished in a way which is just in all the circumstances. The Court also observed that community protection is promoted through just punishment.

### *Proportionality*

A court must not impose a disproportionately long term of imprisonment without regard to the objective seriousness of the offence purely for the purpose of protecting the community from future crimes an offender may commit. The applicant argued that the judge had imposed a disproportionate sentence. In particular, he claimed that it could not be said that in less than 35 years' time there was no realistic possibility of treating his sexual sadism disorder either entirely or sufficiently to contain his risk of reoffending.

The Court noted that the sentencing judge rightly had community protection in mind when sentencing the applicant. But that was not his only consideration. He also took into account other relevant considerations such as general deterrence. The sentence of life imprisonment was not disproportionate and was not imposed purely for the purposes of community protection.

Given the applicant's limited rehabilitation prospects and the seriousness of the offending, it was open to the sentencing judge to fix a non-parole period of 35 years. The Court found that the fixing of the non-parole period of 35 years demonstrated that the sentencing judge had taken into account the possibility of developments in the treatment of the applicant's sexual sadism disorder.

### *Conclusion*

Leave to appeal was refused. The applicant will continue serving his sentence for Ms Dixon's murder. He will be eligible for parole when he is 54 years old. Whether he is granted parole at that time will be a matter for the Adult Parole Board, not the courts.

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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.