



Summary of Judgment

DIRECTOR OF PUBLIC PROSECUTIONS v TARKAN POLAT (A PSEUDONYM)

[2020] VSCA 174

25 June 2020

Today the Court of Appeal by majority (Maxwell P and Beach JA with Croucher AJA dissenting) upheld an appeal by the Director of Public Prosecutions against the sentence imposed on Tarkan Polat (a pseudonym). Mr Polat pleaded guilty to four charges of incest against his stepdaughter and one charge of sexual penetration of a child under 16, involving a second victim.

Mr Polat was sentenced to a total effective sentence of 9 years and 3 months' imprisonment, with a non-parole period of 6 years. The Court of Appeal increased the sentence to a total effective sentence of 12 years and 6 months, with a non-parole period of 9 years.

The Director did not challenge the individual sentences of 6 years' imprisonment on each incest charge. She submitted, however, that the orders for cumulation (9 months on each of 3 incest charges) were inadequate. As a result, the total effective sentence and non-parole period were both manifestly inadequate.

The majority upheld the Director's submission that, given the period of years over which Mr Polat continued to offend against his stepdaughter, the orders for cumulation did not adequately reflect the separate criminality of each incest offence, or his increased culpability on each successive occasion.

The majority said:

This was, as the Director has correctly maintained from the outset, extremely serious offending. It exemplifies with shocking clarity those features of parent-child sexual offending which make it so serious: abuse of parental authority; breach of the trust placed in the parent by the child and by the other parent; and cynical exploitation of the proximity afforded by the status of parent.¹ And these were all quite separate occasions of offending. The sentence had to reflect that.

¹ See, eg, *DPP v Walsh (a pseudonym)* [2018] VSCA 172, [1] (Maxwell P and McLeish JA), *Lugo v The Queen* [2020] VSCA 75, [6], [30] (Maxwell P, Kaye, T Forrest and Emerton JJA).

Croucher AJA was not persuaded that the impugned orders for cumulation or the total effective sentence were outside the range reasonably open in the circumstances of the case. His Honour would have dismissed the appeal.

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.