



Summary of Judgment

SCOTT MERCER (A PSEUDONYM) v THE QUEEN

[2021] VSCA 132

14 May 2021

Background

Today the Court of Appeal (Maxwell P, Beach and T Forrest JJA) refused to extend time for an application for leave to appeal against conviction and sentence. The Court rejected the proposed grounds of appeal and said it would therefore be futile to grant extensions of time.

The applicant was convicted of false imprisonment and attempting to pervert the course of justice. He also pleaded guilty to persistently contravening a family violence intervention order. He was sentenced to a total effective sentence of 5 years and 3 months' imprisonment, with a non-parole period of 3 years and 9 months.

In November 2017, the applicant demanded that the complainant, his de-facto partner, go with him to Crown Casino. The complainant left the vehicle they were travelling in, but was forced back into it by the applicant. This conduct was the subject of the false imprisonment charge.

While he was remanded in custody, the applicant made multiple calls to the complainant to persuade her to drop the charges and to say to police that she had not been in her right state of mind when she made the allegations. This conduct was the subject of the charge of attempting to pervert the course of justice.

The appeal

The applicant submitted that a substantial miscarriage of justice occurred as a result of the judge directing the jury that they could use the phone calls as evidence that the applicant believed he had committed the charges. The applicant also submitted that the sentence was manifestly excessive.

In support of the ground of manifest excess, the applicant argued that his conduct was less serious because the calls he made were unaccompanied by threats or violence. The Court rejected this submission, saying:

In our view, the applicant's persistent and cynical assertion of control over the complainant, and his exploitation of her known vulnerabilities, made this case just as serious as if there had been explicit threats or actual violence. The transcripts of the calls make plain his exertion of coercive psychological pressure on her, encouraging her to think that they can 'work things out' between them and asking questions like 'Do you want me to get out or not?' The fact that the conduct about which he was asking her to lie involved his own criminal violence against her was a further aggravating feature. In our view, the applicant's moral culpability for this offence was high.

The Court also rejected the proposed ground of appeal against conviction, saying:

The applicant's trial counsel was right to concede – and the judge was right to accept – that what the applicant said during the conversations of 6 December 2017 was capable of constituting incriminating conduct.

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.