



Summary of Judgment

DIRECTOR OF PUBLIC PROSECUTIONS v CODEY HERRMANN

[2021] VSCA 160

11 June 2021

Background

Today the Court of Appeal (Maxwell P, Kaye, Niall, T Forrest and Emerton JJA) dismissed an appeal by the Director of Public Prosecutions against the sentence imposed on Codey Herrmann for the rape and murder of Aiiia Maasarwe.

Mr Herrmann, who pleaded guilty, was sentenced to a total effective sentence of 36 years' imprisonment, with a non-parole period of 30 years.

The Court of Appeal described the offending in these terms:

Aiiia Maasarwe was only 21 when [Mr Herrmann] raped and murdered her in the early hours of the morning on 16 January 2019. The sentencing judge (Hollingworth J) described Ms Maasarwe as 'a friendly, optimistic, kind, young woman, who had her whole adult life ahead of her. She was a loving and much-loved member of the Maasarwe family ...'. As the judge said, her death has profoundly affected her parents and her three sisters, leaving 'an enormous hole in their lives'.

The crimes which [Mr Herrmann] committed were deeply shocking, both for their sheer brutality and for their randomness. [Mr Herrmann] made a savage and sustained attack on Ms Maasarwe. He struck her to the head with a metal pipe, rendering her unconscious; he then dragged her from the footpath and forcefully raped her; finally, he struck her head repeatedly, with severe force, causing catastrophic injuries. He acted, the judge found, 'with the clear intention of killing her, not merely injuring her'.

The crimes were also seemingly inexplicable. [Mr Herrmann] was a young man – 20 at the time of the offending – with no prior convictions and no history of violence. He had never met Ms Maasarwe, and there was no evidence that there had been any particular 'trigger' for the attack.

The appeal

The appeal was brought on the ground that the sentence imposed was manifestly inadequate. According to the Director's submission, a sentence of life imprisonment was the only conclusion reasonably open if proper weight was given to the gravity of the offences and, in particular, to the sentencing purpose of protection of the community.

The Court rejected that submission, saying:

In our view, the sentence of 36 years' imprisonment with a non-parole period of 30 years was within the range reasonably open to the judge sentencing this offender for these offences. On any view, the sentence represents severe punishment. Relevantly for present purposes, the sentence can be seen to reflect the giving of appropriate weight to both the horrific nature of the offending and the significant matters in mitigation which her Honour was bound to take into account.

...

There was no dispute between the parties to the present appeal as to the gravity of [Mr Herrmann's] offending. His own counsel had described it on the plea as 'the ultimate offending ... a horrific rape and murder'. The debate on the appeal instead concerned the implications of [Mr Herrmann's] deprived background and impaired mental functioning for the assessment of his culpability and of the risk that he would reoffend in the future.

... [T]he expert evidence of Associate Professor Andrew Carroll, a forensic psychiatrist, established that [Mr Herrmann's] severe personality disorder was the direct result of his childhood deprivation, and that there was a clear causal connection between his impaired mental functioning and the offending. In our respectful view, her Honour was fully justified in viewing [Mr Herrmann] as less morally culpable for this atrocious conduct than a person who had not suffered such deprivation and impairment.

The Court reviewed the evidence on Mr Herrmann's prospects of rehabilitation and concluded that there was no error in the judge's conclusion that he had:

fair prospects of rehabilitation if ... given appropriate treatment, support and supervision.

The Court emphasised the importance of the State ensuring that Mr Herrmann receives the necessary treatment during his sentence:

It is a catchcry of modern governments that 'the safety of the community is our first priority'. Accepting that to be so, the protection of the community – to which the Director quite properly directed our attention – requires that offenders like [Mr Herrmann] be given access to the support services and specialised treatment on which their rehabilitation depends.

... He must, of course, remain ready to engage with treatment but the responsibility rests on the State, which controls his incarceration, to ensure that it is made available.

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.