



## Summary of Judgment

### *DIRECTOR OF PUBLIC PROSECUTIONS v LUKE MERRYFULL & SHAUN BLOOMFIELD*

**[2023] VSCA 244**

**13 October 2023**

Today, the Court of Appeal (Emerton P, Macaulay and Taylor JJA) dismissed two appeals by the Director of Public Prosecutions ('DPP') against the sentences imposed on the respondents by a judge in the County Court of Victoria on 12 April 2023.

On 23 August 2022, after a 12-day trial by jury in the County Court, Luke Merryfull was convicted of one charge of rape and Shaun Bloomfield of two charges of rape and one charge of sexual assault. The offending concerned a single complainant who was a friend of the respondents and had attended a party with them (and others) on the night in question. It was not disputed that the offending was very serious, even though it did not involve threats or additional violence.

Each of the respondents was 21 when the offending occurred and 28 when they were finally sentenced. Both respondents were of previous good character. Neither had a criminal record. Bloomfield was the recipient of The Royal Humane Society of Australasia's Certificate of Merit for rescuing tourists from the surf.

Merryfull was sentenced to 19 months' imprisonment (reckoned as time already served) and a two-year community correction order ('CCO'), whereas Bloomfield was sentenced to 19 months' imprisonment (reckoned as time already served) and a CCO of three years.

The DPP appealed against the sentences, principally on the basis that they were inadequate and, in particular, that too much weight was given to the respondents' rehabilitation during the seven-year delay between the laying of the charges in December 2016 and their sentencing in April 2023.

The Court of Appeal considered the sentences imposed to be very lenient. However, it was unable to conclude that the sentences were manifestly inadequate. There was nothing to indicate the sentencing judge did not appropriately balance the seriousness of the offending, the moral culpability of each respondent, the need for denunciation, general deterrence, and the imposition of just punishment with the matters each

respondent could call in aid in mitigation of sentence. These included the delay, the prospects of rehabilitation, the fact that the respondents had served 19 months' imprisonment and done so during the COVID-19 pandemic, their otherwise good character, work history, and contributions to the community. Furthermore, it was open for the sentencing judge to apply a small degree of mercy.

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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.