



Summary of Judgment

DUNG YAT v THE KING

[2024] VSCA 93

13 May 2024

On 1 May 2024, the Court of Appeal (Walker and Boyce JJA) allowed an appeal by the applicant against the sentence imposed on him by a judge in the County Court of Victoria on 5 September 2023. The Court of Appeal published reasons for its decision on 13 May 2024.

Dung Yat pleaded guilty in the County Court to three offences involving the assault of three corrections officers in 2020 while he was serving a prison sentence for other offending. He was sentenced to 14 months' imprisonment with a non-parole period of 8 months.

The sentencing judge described the offending as 'extremely serious'. She also observed that it was difficult to assess Yat's prospects of rehabilitation as positive, given his criminal history. However, her Honour also had regard to several factors that the applicant could call in aid of mitigation of his sentence, including the significant delay in bringing the charges; the applicant's youth at the time of offending; his diagnosis of post-traumatic stress disorder and a depressive disorder; his guilty plea; and the restriction on prison visits during the Covid-19 pandemic. The judge also had regard to the fact that Yat had spent an extended period of time in a management unit in prison since his offending, which constituted a form of extra-curial punishment.

Yat sought leave to appeal against his sentence in the Court of Appeal on the basis that it was manifestly excessive.

The Court of Appeal agreed that the offending was serious. Moreover, as the offending was against prison officers, significant weight needed to be given to general deterrence. The applicant's criminal history also meant that weight needed to be given to specific deterrence.

However, the Court held that, when all of the matters in mitigation were considered, a sentence of 14 months' imprisonment was manifestly excessive. In particular, the Court had regard to the fact that Yat had spent nearly three years in a management unit, which

was ‘extreme and amounted to a form of solitary confinement’, by the time he was sentenced. The applicant was confined to his cell for 22 or 23 hours a day, had only limited contact with other persons, and was deprived of access to programs that might have assisted his prospects of rehabilitation.

The respondent argued that only limited weight could be given to the period that the applicant had spent in a management unit, because it was his own conduct that caused him to be placed there. The Court rejected that submission and held that in this case the applicant’s time in a management unit should be given significant weight because it involved such a lengthy period in solitary confinement. The Court also observed that there was no authority in Victoria to the effect that burdensome prison conditions cannot be taken into account where those conditions arise from the prisoner’s own misbehaviour. The Court observed that, were that question to be decided, it would require attention to the *Charter of Human Rights and Responsibilities Act 2006*, about which the Court had received no submissions.

The Court allowed the appeal and re-sentenced the applicant to 12 months and 1 day’s imprisonment with a non-parole period of 6 months.

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.