IN THE SUPREME COURT OF VICTORIA
COURT OF APPEAL
(CRIMINAL DIVISION)

S APCR 2017 0127

THE QUEEN

Respondent

- v -

DIMI SOVOLOS

Applicant

RESPONSE TO APPLICANT'S WRITTEN CASE

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Filed on behalf of:	Respondent
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1. **Part A: Particulars of Conviction and Sentence, Relevant Statutory Provisions and Maximum Penalties**

1.1 On 3 March 2017 the applicant was found guilty following trial before His Honour Judge Stuart in the County Court in Melbourne. On 18 May 2017 the applicant was sentenced as follows:

Charge	Offence	Maximum	Sentence	Cumulation
1.	Aggravated burglary s.77(1) *Crimes Act* 1958	25 years s.77(2) *Crimes Act* 1958	7 years imprisonment	Base
2.	Reckless Conduct Endanger Life s.22 *Crimes Act* 1958	10 years s.22 *Crimes Act* 1958	5 years imprisonment	2 years
3.	Intentionally Cause Injury s.18 *Crimes Act* 1958	10 years imprisonment s.18 *Crimes Act* 1958	4 years imprisonment	3 months

Total Effective Sentence:	9 years 3 months imprisonment
Non-Parole Period:	7 years 6 months. Eligible for parole on 1 May 2022[1]
Pre-Sentence detention declaration pursuant to s 18(1) of the *Sentencing Act 1991*:	N/A
6AAA Statement: N/A	
Other relevant orders: Disposal order; Forfeiture order	

2. **Part B: Summary of Relevant Facts**

2.1 The Crown relies upon the summary of offending as set out in the Reasons for Sentence dated 18 May 2017 at paragraphs [2] – [25].

3. Part C: Grounds of Appeal

Ground 1 – The head sentences and total effective sentence are manifestly excessive.

PARTICULARS:

a) **Too much weight was given to the escalation in the applicant's criminality represented by his subsequent convictions.**
b) **Insufficient weight was given to mitigating factors.**
c) **Insufficient weight was given to considerations of totality.**

3.1 The sentences imposed on the applicant were within range.[2] Manifest excess is a stringent ground, difficult to make good. It must be shown that something has gone obviously, plainly or badly wrong in the exercise of the sentencing discretion.[3]

[1] See Reasons for Sentence, *DPP v Dimi Sovolos* [2017] VCC [57]-[59]
[2] *McPhee v The Queen* [2014] VSCA 156, [9]-[11] (Redlich and Priest JJA).
[3] *Ayol v The Queen* [2014] VSCA 151, [30] (Maxwell P) citing *Clarkson v the Queen* (2011) 32 VR 361, 384 [89] (Maxwell ACJ, Nettle, Neave, Redlich and Harper JJA); *Young v The Queen* [2016] VSCA 149, [128] (Ashley, Whelan and Kaye JJA).

Objective Seriousness of Offending

3.2 The applicant's offending was extremely serious. The aggravated burglary was objectively a very serious example of that offence and fell very much toward the higher end of seriousness for such offending. Accordingly, the learned sentencing judge was correct to find that the aggravated burglary was "of a most grave kind."[4] Particularly, the applicant was in company with two co-offenders when he committed that offence. They were each disguised. The offence took place in the early hours of the morning where there was an expectation that people would be at home and most likely asleep. All three offenders were armed and the applicant had with him a .22 calibre rifle. The group were in possession of a "burglars kit" that included plastic ties fashioned in a way so as to be capable of being used as handcuffs.[5] The relevant intent at the time of entry to the premises was an intent to assault.[6]

3.3 Such offending clearly called for a very significant sentence of imprisonment.

3.4 The applicant's offending the subject of count 2 was also an example of a serious offence and was toward the upper end of seriousness for such offending. It comprised the applicant discharging a loaded rifle in the direction of the victims on seven occasions – five times from outside the back door into the premises and two further shots from within the premises towards the victims.[7] The evidence of Mrs Sawan had been that the applicant deliberately pointed his gun in her direction and fired.[8] This offending also involved a co-offender discharging a firearm near the victims. The degree of recklessness for this offending was very high and the risk of death very real.

3.5 Again this offence called for a substantial sentence of imprisonment.

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[4] Reasons [23].
[5] Reasons [23].
[6] Reasons [22].
[7] Reasons [23].
[8] Reasons [7].

3.6 The offending comprised by count 3 involved the intentional causing of injuries to Mr Sarwan in his own home. Those injuries included lacerations to his upper forehead and temple, bruising and other associated injuries.[9] Again it was relevant that the injuries were caused by multiple offenders in circumstances that must have been terrifying for the victim.

3.7 The overall seriousness of the applicant's offending was objectively very high, as was his moral culpability for that offending.

Escalation in the Applicant's Offending

3.8 In response to the specific complaint made under cover of this ground, it is submitted that it was open to his Honour to regard the offences committed by the applicant as a "grave escalation"[10] in his offending. It clearly was. The applicant accepts that this is so.[11] It was open to his Honour to give appropriate weight to this factor in sentencing the applicant, particularly as it related to the need to specifically deter the applicant. There is nothing in the sentences imposed, or the Reasons for Sentence, to suggest that too much weight has been attributed to this feature of the applicant's offending.

Mitigation

3.9 The mitigating factors that could be relied upon by the applicant were limited and unexceptional. There was no plea of guilty. No demonstration of remorse. The principles in *Verdins* had no role to play. The applicant's prospects of rehabilitation were not good and depended significantly on whether the applicant could remain drug

[9] Reasons [15].
[10] Reasons [32].
[11] Applicant's written case at [14].

free, in which case they were "bleak if not non-existent."[12] None of these factors could be relied upon to require a reduction in sentence.

3.10 True it is that the applicant retained the support of his family and was still somewhat youthful[13], however these factors could not be given much weight in the sentencing synthesis when regard was had to the objective seriousness of the offending and relevant sentencing principles.

Current Sentencing Practices

3.11 The applicant relies upon a number of decisions of this Court as establishing that the applicant's sentence for aggravated burglary is excessive. Care must be exercised in comparing such cases. Several have relevant distinctions from the applicant's case:

Salih – involved significant delay and efforts towards rehabilitation.

Perri - involved a re-sentence because of parity considerations in circumstances where the co-offender had been sentenced to a "very lenient" sentence.

Miller – the appellant had excellent prospects of rehabilitation.

Tangaloa – the appellant had no prior convictions.

3.12 Further in *Kheir* a sentence of 6 years imprisonment for aggravated burglary following trial was found not to demonstrate error and leave to appeal was accordingly refused.

[12] Reasons [52].
[13] The applicant was 26 at the time of the offending and 28 at the time of sentence.

3.13 The Judicial College of Victoria 'VSCA Overview for Aggravated Burglary Sentences'[14] also discloses matters where sentences comparable to that imposed on the applicant were imposed following pleas of guilty. For example, *Maurice*,[15] *Guven*[16] and *Cartwright.*[17]

Totality

3.14 Insofar as it is a particular of this ground, it is submitted that his Honour has given very careful consideration to the principle of totality as it applied to sentencing the applicant.[18] No error is manifest in the modest orders for cumulation in respect of counts 2 and 3. The overall sentence imposed properly reflects the extremely serious nature of his offending.

3.15 When proper regard is had to the objective seriousness of the applicant's offending, the relevant maximum penalties, the relevant sentencing principles, the applicant's lengthy criminal history and the other matters personal to the applicant, it cannot be said that the sentences imposed on him are outside the range of sentences available in the proper exercise of the sentencing discretion. Accordingly, leave to appeal should be refused.

Ground 2 – The Learned Sentencing Judge misapplied the totality principle, in that the orders for cumulation and the total period which the applicant is required to spend in custody are disproportionate.

3.16 The applicant was sentenced in the County Court on 17 May 2017 for breaching a community corrections order. He had been sentenced to a period of imprisonment in combination with a CCO on 8 September 2015 for offences of trafficking in a drug of

[14] Victorian Sentencing Manual part 32.14.4.1.
[15] *Maurice v R* [2011] VSCA 197.
[16] *Guven v R* [2017 VSCA 92.
[17] *R v Cartwright* [2015] VSCA 11.
[18] Reasons [35] – [37].

dependence, possession of an unregistered firearm, handling stolen goods and theft. That CCO had not included a requirement to perform unpaid community work.

3.17 The breach of CCO was by way of non-compliance with conditions as well as by further offending.

3.18 On 17 March 2017 the applicant was also sentenced by his Honour in respect of offending originally dealt with in the Magistrates' Court, but before his Honour on appeal. That offending involved the theft of eight motor vehicles, criminal damage, obtaining property by deception, burglary and other offences. This offending breached the CCO mentioned above.

3.19 In sentencing the applicant for the offences on appeal, his Honour noted that the sentences imposed by the learned magistrate were, in his view, wholly appropriate.[19] Nonetheless his Honour stated that because of totality considerations he would impose a lesser sentence.[20] He sentenced the applicant to 20 months imprisonment on the appeal matters and a further 1 month imprisonment for the breach offence.

3.20 On 18 May 2017 his Honour ordered that the sentence imposed that day be served cumulatively upon the 21 month sentence imposed the day before.[21] That produced a total overall sentence of 11 years imprisonment. A global non-parole period of 7 years 6 months was fixed.

3.21 In arriving at the overall sentence his Honour had clearly been mindful to give effect to the principle of totality.[22] It was open to his Honour to order that the sentences imposed on the different days, for wholly unrelated offending, be served cumulatively. He had taken his intention to do that into account when arriving at an appropriate

[19] Reasons [35]. See also Reasons , 17 May 2017 at [17].
[20] Ibid.
[21] Reasons [58].
[22] Reasons [35].

sentence for both the appeal matters and the indictable offending.[23] The applicant fell to be sentenced for significant overall criminality in circumstances where he had little to rely upon by way of mitigation and where principles of general deterrence, specific deterrence and protection of the community were paramount.

3.22 In those circumstances it cannot be said that the overall sentence imposed on the applicant demonstrates a failure to apply either totality or proportionality. Leave to appeal should be refused.

DATED: 1 September 2017

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Matthew Phillips

Counsel for the Respondent

[23] Reasons 17 May 2017 at [17], Reasons 18 May 2017 at [36].