HIGH COURT OF AUSTRALIA

18 March 2020

THE QUEEN v GUODE
[2020] HCA 8

Today the High Court by majority allowed an appeal from the Court of Appeal of the Supreme Court of Victoria concerning whether the Court of Appeal took into account an irrelevant consideration when determining the respondent's appeal against sentence.

The respondent was arraigned before the Supreme Court of Victoria on an indictment alleging one charge of infanticide ("Charge 1"), two charges of murder ("Charges 2 and 3") and one charge of attempted murder ("Charge 4"). The events comprising those offences took place on 8 April 2015, when the respondent drove a car carrying four of her children into a lake with the intention of killing each of the children. The three youngest children, including the respondent's infant son, died as a result.

Section 6(1) of the *Crimes Act 1958* (Vic) provided that a woman is guilty of infanticide and not murder if she carried out conduct causing the death of her child in circumstances that would constitute murder and, at the time of carrying out that conduct, the "balance of her mind was disturbed" because of her not having fully recovered from the effect of giving birth to that child within the preceding two years, or because of a disorder consequent upon giving birth to that child within the preceding two years. Section 6(1) of the *Crimes Act* provided that the maximum penalty for the offence of infanticide is five years' imprisonment; a significantly shorter maximum penalty than that for murder, being life imprisonment, and for attempted murder, being 25 years' imprisonment.

The sentencing judge found that the respondent was affected by a depressive disorder that was relevant to the sentencing for all four offences, and that consequently the sentencing principles stated in *R v Verdins* (2007) 16 VR 269 applied to mitigate the sentences that might have otherwise been imposed. The sentencing judge sentenced the respondent to 12 months' imprisonment in respect of Charge 1, 22 years' imprisonment for each of Charges 2 and 3, and six years' imprisonment in respect of Charge 4. Cumulatively, the sentencing judge sentenced the respondent to a total effective sentence of 26 years and six months' imprisonment with a non-parole period of 20 years. The Court of Appeal allowed the respondent's appeal against sentence and determined that the sentencing judge had erred by giving insufficient weight to the respondent's mental condition and other mitigating factors, with the consequence that the sentences imposed for Charges 2, 3 and 4 were manifestly excessive. The Court of Appeal re-sentenced the respondent to 16 years' imprisonment for each of Charges 2 and 3, and to four years' imprisonment in respect of Charge 4. The Court of Appeal imposed a total effective sentence of 18 years' imprisonment and a non-parole period of 14 years.

By grant of special leave, the Crown appealed against the Court of Appeal's decision on the sole ground that the Court erred by taking into account an irrelevant consideration when assessing whether the sentences imposed at first instance were manifestly excessive. A majority of the High Court held that the Court of Appeal erred by taking into account the Crown's acceptance of the respondent's plea of guilty to the charge of infanticide when considering whether the sentences imposed for Charges 2, 3 and 4 were manifestly excessive. The majority observed that although the evidence of the mental condition operative at the time infanticide is committed is

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likely to be the same as that to be considered for the purpose of applying the *Verdins* considerations, satisfaction of the elements of infanticide under the *Crimes Act* says nothing sufficiently specific about the nature and gravity of the mental condition for the purposes of applying the *Verdins* considerations to the other offences.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*