

## **THE QUEEN v GUODE (M75/2019)**

Court appealed from: Court of Appeal, Supreme Court Victoria  
[2018] VSCA 205

Date of judgment: 16 August 2018

Date special leave granted: 17 May 2019

On 8 April 2015 the respondent deliberately drove her car, with her four youngest children inside it, into Lake Gladman, Wyndham Vale. The three youngest children, twins aged 4 years and a baby aged 17 months, drowned. Only the eldest child, aged five years, survived. On 16 January 2017, the respondent pleaded guilty in the Supreme Court of Victoria to infanticide (charge 1), two charges of murder (charges 2 and 3) and one charge of the attempted murder (charge 4). The sentencing judge (Lasry J) imposed a sentence, on the charge of infanticide, of 12 months' imprisonment (with an order for cumulation of 6 months), 22 years' imprisonment in relation to each charge of murder (with an order for cumulation of 3 years upon one charge) and 6 years' imprisonment in relation to the charge of attempted murder (with an order for cumulation of 1 year). This resulted in a total effective sentence of 26 years and 6 months imprisonment with a non-parole period of 20 years.

The respondent sought leave to appeal against sentence on the ground that the sentence was manifestly excessive. On 30 October 2017, Weinberg JA refused leave to appeal. The respondent renewed her application for leave to appeal. On 16 August 2018 the Court of Appeal (Ferguson CJ, Priest & Beach JJA), allowed the appeal.

The Court considered that the charges of murder and attempted murder had to be viewed in light of the statutory definition of infanticide in s 6(1) of the *Crimes Act 1958* (Vic) and by the prosecution's acceptance of a plea to infanticide with respect to the baby, by which it acknowledged that all four offences were committed in circumstances arising from, or causally connected to, a clinically significant mood disorder consequent upon the respondent recently having given birth to the baby. They noted that the uncontradicted psychiatric opinion was that the respondent's capacity to appreciate the wrongfulness of her conduct at the time was impaired, and the intent of her behaviour was obscured.

The Court considered the respondent's moral culpability to be significantly reduced, rendering denunciation less important in the exercise of the sentencing discretion than would otherwise be the case, and affecting the punishment that might be considered just in all of the circumstances. Moreover, given the manner in which the respondent's condition diminished her capacity to exercise appropriate judgment and to think clearly and make calm and rational choices, and adversely affected her capacity to appreciate the wrongfulness of her conduct, both general deterrence and specific deterrence had to be significantly moderated as sentencing considerations.

The Court accepted the submissions of the respondent's counsel that sentences of 22 years' imprisonment on each of the two charges of murder were of the order of sentences generally reserved for cases unattended by the powerful mitigating features of this case. Had adequate weight been given to the respondent's mental

condition and other factors in mitigation, the Court considered that significantly more lenient sentences would have been imposed on each of those charges. The Court resentenced the respondent to 12 months' imprisonment on the charge of infanticide (with an order for cumulation of 6 months), 16 years' imprisonment on each charge of murder (with an order for cumulation of 12 months against one charge) and 4 years' imprisonment on the charge of attempted murder (with an order for cumulation of 6 months). This resulted in a total effective sentence of 18 years' imprisonment with a non-parole period of 14 years.

The ground of appeal in the Crown's appeal from the judgment of the Court of Appeal is:

- The Court of Criminal Appeal erred in taking into account as a relevant consideration in making its determination as to manifest excess the fact that the prosecution had accepted a plea to infanticide in respect of Charge 1 on the indictment.