

IN THE CHILDREN'S COURT OF VICTORIA

CRIMINAL DIVISION

Victoria Police

Applicant

v

Amy Hammond (not her real name *)

Respondent

<u>MAGISTRATE:</u>	Fleming	
<u>WHERE HELD:</u>	Melbourne	
<u>DATE OF HEARING:</u>	22 October 2015	
<u>DATE OF JUDGMENT:</u>	2 February 2016	
<u>CASE MAY BE CITED AS:</u>	R v AH	
<u>MEDIUM NEUTRAL CITATION:</u>	[2016] VChC 1	

REASONS FOR SENTENCE

Catchwords: Criminal law – sentence – gross violence – summary jurisdiction - accused charged with causing serious injury intentionally in circumstances of gross violence pursuant to section 15A of the *Crimes Act 1958* – absence of remorse – sentencing in the Children's Court.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the applicant	Ray Gibson	Office of Public Prosecutions
For the respondent	David Gibson	VLA

* All names in this judgment, apart from those of counsel, have been changed.

1. The prosecution was resolved at committal stage with a plea of guilty to one count of intentionally causing serious injury with gross violence. The charge of attempted murder was withdrawn.

Circumstances of the offence

2. The plea went forward on the basis of the following agreed summary of prosecution opening.¹
3. On the 5th day of June 2015, the victim and the accused attended the (location removed) TAFE institute where they attended class and held discussions about spending time together after class.
4. At approximately 11.45 am the pair left the TAFE together and met up with a mutual friend named Tim Smithers.
5. At approximately 12.00 pm, the group caught a Ventura Bus from (location removed) railway station to (location removed) shopping centre, arriving at approximately 12.23 pm. The group walked through the shopping centre and have been led by the accused exiting on the northern side of the shopping centre, facing the direction of the accused's residence.
6. The accused led the victim and Smithers through a car-park to a footbridge approximately 100 metres from the accused's house. The accused told the victim and Smithers to remain at the footbridge whilst she went home to collect a change of clothes among other things.
7. Whilst at her house the accused has collected a black and orange handled knife with a serrated 10 cm silver blade from her room and kept the knife on her as she left to return to the victim and Smithers.
8. The group have re-united at the footbridge and walked along a bike track which runs directly behind the accused's house. Smithers walked in front of the victim and the accused. The accused held the knife in her right hand whilst she contemplated using it on the victim. The accused turned the knife slowly in her right hand and thought about her decision. The accused grabbed the victim by the hair and thrust the knife into the victim's neck.
9. The accused punched the victim to the face until she fell to the ground. The accused stabbed the victim in the throat/neck area repeatedly as the victim began to beg for the accused to stop.
10. The victim held her throat in an attempt to stop the bleeding from her neck. The victim shuffled back in a pool of her own blood in an attempt to create distance from the accused. The

¹ Agreed summary.

accused front-kicked the victim to the throat and chest area as the victim again pleaded with her to stop.

11. Smithers saw what had occurred and ran over to render assistance to the victim. The accused fled the scene and returned home to collect her Myki card.
12. Smithers phoned 000 requesting the assistance of the ambulance.
13. Smithers was advised to try and find something to place over the hole in the victim's neck. Smithers located a piece of clothing which was sticking out of the victim's bag and placed the piece of clothing on her neck.
14. Dean Mills was walking his dog towards the direction of the shopping centre along the bike path towards where the victim lay bleeding. Smithers waved to Mills who walked up to Smithers. Smithers told Mills he had phoned 000 and directed him to wait near Marigold Drive as an ambulance was on its way. Mills walked towards the footbridge and phoned 000 and requested the assistance of both police and ambulance where he remained until such services arrived.
15. Police and ambulance arrived at the scene where the victim was airlifted to the Alfred Hospital where she received emergency surgery for the injuries she had sustained to her throat and neck.
16. The accused left her house and walked through the shopping centre with her head down to avoid her image being captured on CCTV. The accused walked to a public toilet where she washed her hands and let out her hair. The accused left the toilet and walked towards the bus bay. The accused caught a bus from the shopping centre to the (location removed) CBA area where she has attended a personal appointment with a support worker located above a medical centre on Gordon Street, (location removed).
17. The accused left her appointment and walked down Pritchard Lane in (location removed) to a large car park area. Sitting at the back of a building was Chloe Rouse, an associate of the accused.
18. The accused approached Rouse and asked her to come for a walk with her as she needed to "stash something". The accused and Rouse walked to a drain square at the rear of Melbourne Radiology building. The accused reached into her bag and pulled out the bloodied knife used to stab the victim. The accused looked around before throwing the knife onto the ground. The knife was placed by the accused into a drain pipe which ran up the wall of the building in an attempt to hide her involvement in the stabbing of the victim.

19. The accused caught a bus home where she removed the clothing that she had been wearing throughout the day. The accused ripped the shirt she was wearing in half, stuffing half in a speaker system in her bedroom and the other half in a small tear in the lining of a brown hand bag.

Sentencing remarks

20. The offence of intentionally causing serious injury in circumstances of gross violence is constituted by the intentional infliction of serious injury on another in circumstances of gross violence.

21. The circumstances of this offence fall squarely within the definition of the offence. The accused intended that her conduct would cause a serious injury, she planned it in advance, organised to obtain the knife and she continued to cause injury to the victim even after the victim was incapacitated.

22. The maximum penalty for a section 15A offence is 20 years.

Sentencing Act 1991

23. The Sentencing Act 1991 s 10 (1) requires the court to sentence an offender to a term of imprisonment with a minimum non parole period of four years, unless special reasons exist for not doing so.

24. Section 10 (2) of the Sentencing Act explicitly provides for certain circumstances in which the mandatory minimum penalty will not apply

25. The penalty will not apply to a person who was under 18 at the time of committing the offence.

Children, Youth and Families Act 2005

26. The sentencing regime in the Children's Court is prescribed by the *Children, Youth and Families Act 2005*. This Act enshrines principles enunciated in section 362 and the Court must, as far as is practicable, have regard to these principles in determining what sentence to impose on a child. This is predominantly a welfare model with only some of the principles in (e), (f) and (g) having a justice component.

27. Unlike the Sentencing Act there is no explicit mention in s 362 of punishment, denunciation or deterrence (either specific or general). Section 362 (e) and (f) which refer to suitability and accountability are the nearest provisions to imposing punishment or specific deterrence.

28. While generally speaking normal sentencing principles are applicable to young offenders, the Court of Appeal has been clear in emphasizing that child offenders will be sentenced under a different regime to adult offenders.
29. Given the gravity of this offence it is critical that I explain the difference in the sentencing regimes that relate to adults and children. The Court of Appeal expressed it best in *R v Dwayne Andrew Evans*² in discussing the elaborate system developed to deal with child offenders. The Court of Appeal said that emphasis must be on therapeutic considerations because that is what is in the interests of the community and the young person, that is to endeavour to divert the child from anti social conduct.
30. Importantly, the Court of Appeal said “these considerations can and do lead to dispositions which would be regarded as entirely inappropriate in the case of older and presumably more mature individuals”.
31. In delivering this sentence it helps to also refer to *CNK v The Queen*³ where the Court of Appeal said: “A court sentencing a child [is] required to consider the gravity of the offence, the remorse of the offender, whether or not the offender had pleaded guilty, the offender’s character and antecedents, and the impact of the offence on the victim. Unlike general deterrence, however, those considerations are all directed at an assessment of the particular offending, and of the particular offender, and they inform the determination of a sentence which is properly reflective of all of those features. The statutory directive in s 362 (1) – to take the specified matters into account ‘as far as practicable’ is an acknowledgment that the Court’s ability to do so may be affected by those various factors.”

Victim Impact Statements

32. The victim who was 16 at the time was an associate of the accused they having known each other through their college for only a short time (2 weeks).
33. At the time the victim was airlifted to the Alfred Hospital she was semi conscious unable to stand and barely able to talk. She was covered in blood and had puncture wounds to her throat and neck. The victim was then admitted to the Alfred Hospital where, upon arrival at the hospital, medical staff notified police who then attended.⁴
34. The victim required emergency surgery to her throat and neck. Her injuries included complete transection of the jugular vein causing large loss of blood, (approximately 1 litre).

² [2003] VSCA 223

³ [2011] VSCA 228

⁴ Alfred Hospital medical records

35. Victim impact statements have been read aloud in court. There is no doubt that the victim continues to suffer as a consequence of the injuries inflicted upon her by the accused. The victim's family also continues to suffer as a consequence of the pain and suffering caused to their family member. The statements clearly reflect their ongoing anxiety and distress. They are present at court today.

Antecedents

36. The accused is 16 years of age and has a prior criminal history. On 19/12/2013 she was charged with theft of a motor vehicle, unlawful assault and state false name when requested. She was sentenced to an accountable undertaking for 12 months in the Children's Court.

37. On 13/3/2015 the accused was charged with theft from shop and the Children's Court sentenced her to a Good Behaviour Bond for 12 months with conditions that she continue to engage with and accept support services from Gatehouse as recommended by her case worker.

Personal circumstances

38. The accused is the eldest of four children. She was born in (country removed) and identifies as (cultural group removed). Her childhood was traumatic in so far as she was sexually abused as a child by multiple male members of her extended family. One report discloses that the sexual abuse may have commenced as early as when the accused was 4 years of age. The abuse ceased when she was 12 years old when her father became aware of it.

39. Due to her trauma and previous sexual abuse history, the accused was referred by YSAS to Gatehouse Young Women's Project which is a program for teenagers who are at risk or have experienced sexual abuse. She has been engaged with this service since September 2014. The accused's worker referred her to CASA.

40. Child Protection became involved with the accused in 2011 when there were concerns about inappropriate discipline occurring in the home. There were also concerns raised about her exposure to family violence in the home and sexual abuse by her cousin. Throughout the protective intervention the accused's risk taking behaviours were increasing. She began absconding for significant periods of time, substance using and associating with older peers. In December 2011 a protection application warrant was sought for her apprehension. At various times she was placed on a supervision order, and spent some time in Secure Welfare for her own protection due to her risk taking behaviours.

41. In July 2013 the accused was made subject to a custody to Secretary order (CTSO). She began to engage positively with Wesley Youth Support Services and YSAS. Throughout 2014

the accused's risk taking behaviours had drastically decreased according to the pre-sentence report. The accused had enrolled in TAFE to complete her VCE in 2015 and was engaging with CASA. DHHS reviewed her case plan and a decision was made to allow her CTSO to lapse and Child Protection withdrew all involvement.

42. The accused has a history of substance abuse having commenced using inhalants daily from age 12. Excessive use of alcohol reportedly decreased when she was 14 and the same with cannabis. The accused used ice one month prior to the attack.

Dr Williams – First report

43. Dr Williams examined the accused in August 2015. He notes that the accused “does not make a comprehensive expression of remorse. It is not that she is a person who cannot appreciate victim empathy, she having been in a victim's role herself for an extended period, and she did express some relief that the victim survived, but Ms Hammond is an emotionally damaged individual herself, perplexed by her conduct and quite limited in her capacity to actually articulate remorse.”⁵

44. “The ultimate management of this young woman within the community I would see as at least somewhat problematic. There are reasonably readily identifiable psychological issues which can be approached and, to some extent, they were already being addressed previously and that simply needs to be continued. However, Ms Hammond has demonstrated that she is capable of very serious violent behaviour and simply because that has occurred then that places her in an elevated risk category of a recurrence, although some reassurance can be taken from the fact that she seems not to have been habitually prone to aggressive behaviour. The difficulty is that if there is to be a further dangerous outburst, there may well not be any recognisable premonitory signs or symptoms even if she were being monitored by astute observers. What I would see as much more likely is that Ms Hammond may engage in much less serious offending but sufficiently noteworthy to secure her return to youth detention which sadly, she finds to be a more harmonious and supportive environment than that with which she is familiar. That said, I do not see the situation as one of irreversible prognostic gloom. Ms Hammond does have some positive strengths and she does impress as being well motivated towards bettering herself and her circumstances but I would be surprised if there are no further hiccups in her progress.”⁶

⁵ Dr Williams – report dated 6/08/2015

⁶ At page 5

Dr Williams – Second report

45. In a more recent report Dr Williams reports that the accused is progressing favourably in response to the psychological counselling.
46. Dr Williams' opinion is that the accused is "striving to understand the reasons behind her aggressivity (currently that insight remaining incomplete) as well as her simply not wishing to engage in violence. Objectively she does remain at risk of further aggression but the situation would seem to be far from prognostic gloom."⁷
47. Dr Williams makes a submission about Verdins and I agree with the prosecution that it is wholly outside his function to express a view and I do not rely on his opinion on that score.
48. Dr Williams however does diagnose the accused as having a "chronic mood disorder, PTSD and personality damage".

Dr Danby

49. Dr Danby, adolescent psychiatrist, St Vincent's Hospital, has prepared a report dated 10/9/2015. It is disturbing in its content. Dr Danby's opinion in September 2015 was that "Amy is not well in her mental state and it is my unequivocal clinical opinion that the community would be at high risk if she was to be released in the foreseeable future."⁸
50. A report has been tendered from Parkville College dated 15/12/2015 which is a very positive report and concludes with a comment: "We are optimistic about her rehabilitative prospects."
51. Having heard the submissions and read the material provided by defence counsel in mitigation there is no doubt that the conduct engaged in by the accused is in the worst category of offending for this sort of offence. I accept the prosecution submission that it is at the extreme end of cases heard in the Children's Court involving violence. A most concerning feature is that the accused has demonstrated little, if any, remorse.

Restriction of access to pre-sentence report

52. The pre-sentence report provided by Ms Charles from Youth Justice provides detail of the accused's attitude to the offence. Ms Charles has sought restriction on access to the report on the basis that it is her opinion that discussion of the contents of this report in open court may be prejudicial to the physical or mental health of the young person.

⁷ Dr Williams – report dated 23/11/2015

⁸ Dr Danby – report dated 10/09/2015

53. There is no evidence before me apart from Ms Charles's opinion, that the report would be prejudicial to the accused. The accused has on many occasions been questioned about the offending, by doctors and police. Her attitude to the offending is unchanged. She is not remorseful and has demonstrated little if any victim empathy. I am not satisfied that access to the pre-sentence report be restricted given the above.
54. The accused's absence of victim empathy and of remorse is a factor that will loom largely in any rehabilitation process that the accused undertakes and until she is able to demonstrate remorse the evidence before me is that she will be a risk to the community.
55. The plea of guilty to the one charge is not reflective of remorse and it is conceded by defence counsel that the accused has not demonstrated remorse.
56. This Court in sentencing the accused must take into consideration the fact of her plea of guilty. I note that she has progressed favourably while in custody and has demonstrated good prospects of rehabilitation.
57. Section 362A of the CYFA prescribes a discount in sentence for a plea of guilty .
58. S362A (1) If
- (a) in sentencing a child, the Court imposes a less severe sentence than it would otherwise have imposed because the child pleaded guilty to the offence; and
 - (b) the sentence imposed on the child is or includes –
 - (iii) a youth justice centre order –
- the Court must state in respect of each offence the sentence that it would have imposed but for the plea of guilty.
59. It is conceded by defence counsel that the law does not require a discount to be given. It is conceded that the offending is so serious that a discount may not be warranted.
60. In sentencing the accused I take into consideration all of the factors above noting that the accused being a child with a mental health condition has entered a plea of guilty at an early opportunity. The accused has acknowledged her guilt, however her capacity to feel remorse is limited. Dr Williams expresses that is a symptom of her damaged personality and her mental health condition.
61. While she has been in custody she has demonstrated a capacity to rehabilitate herself and a capacity to learn. She has no intellectual disability.

62. Without the appropriate rehabilitation, however the accused remains a risk of committing further offences.
63. In sentencing therefore I take into consideration her plea of guilty and the stage in the proceedings at which time she pleaded guilty. Further, I take into consideration the utilitarian element in the plea of guilty noting that it would have been extremely distressing for the victim to give evidence.
64. Further, I take into consideration the accused's mental health, a symptom of which is her incapacity to demonstrate remorse.⁹ The accused mental health also reduces her moral culpability (*Verdins*).¹⁰
65. I also note that the sentencing power in the Children's Court is vastly different to the sentencing power in the County Court and the accused has the benefit of this Court in sentencing her. Her sentence is reduced as a result.
66. The maximum penalty available to this court is 24 months youth justice centre period of detention. Accordingly, the accused will be sentenced to a period of detention of 22 months in a youth justice centre and her pre-sentence detention will be calculated as time served.
67. But for the Accused's plea of guilty and in accordance with s 362 the sentence that I would have imposed would have been 24 months detention in the Youth Justice Centre.

Magistrate Lesley Fleming

2 February 2016

⁹ Refer to Dr Walton's report

¹⁰ *R v Verdins* (2007) 16VR 269