

OUTLINE

In *Honeysett v The Queen* [2018] VSCA 214, the offender had been convicted and sentenced for his role in the armed robbery of a liquor store and use of a stolen getaway car.

The offender argued that the individual and resulting sentences were manifestly excessive due to his youth, personal history, involvement in the Koori Court process, and remorse.

The Court of Appeal (Priest, Beach and Hargrave JJA) rejected these arguments and confirmed the total effective sentence of 5 years with a non-parole period of 3 years. In the course of its judgment, the Court outlined how participation in the Koori Court process is relevant to sentencing.

FACTS

In February 2017, the offender and two co-offenders robbed a suburban liquor store in a stolen car. The offender entered the store armed with a knife while one co-offender kept guard at the door, armed with a meat cleaver. The offender ran to a register, pushed a customer aside and waved the knife at the employee while demanding money. The employee screamed and froze in fear. The store manager came and attempted to remove the cash register draw. The offender threatened to stab the manager if he did not hurry up. Ultimately, the offender took the drawer containing \$1,052.35 and left the store.¹

The offender was aged 23 at the time of offending. His upbringing was disrupted by the fact that his mother and father were both heavily drug addicted and had died before he reached the age of 15. He left school after Year 8, unable to read or write, and has never maintained consistent employment. He has a history of drug addiction, having started using amphetamines when aged 15 and had continued heavy use of methamphetamine and GHB. The aim of this offending was to acquire money to pay off a friend's drug debt.

The offender had extensive prior convictions, having been in and out of custody since he was aged 16. This included two convictions for armed robbery – in 2011 and in 2013. In the 2013 proceedings, he was sentenced in the County Court Koori Court, where the judge had noted his efforts at rehabilitation, and his intention to reform.

The Court summarised the offender's situation as follows:

In summary, the appellant presented to the County Court as a relatively young Aboriginal man from a deprived childhood who regularly abused illicit drugs and had a long and disturbing criminal history. He had already been in adult prison five times and had spent only very short periods in the community. He was fast approaching institutionalisation.²

¹ *Honeysett v The Queen* [2018] VSCA 214, [8]–[11].

² *Honeysett v The Queen* [2018] VSCA 214, [21].

JUDGMENT

The sentencing judge noted the offender's participation in the Koori Court process, which was challenging and a factor in mitigation of punishment. During the sentencing conversation, the offender expressed his remorse, his desire to bring about changes in his life and to remain drug-free. The judge also noted the impact and ongoing effects of the offending on the store manager, who has become hyper-vigilant, scared of loud noises and concerned about her ability to ensure the safety of her staff.

On the appeal, the Court reiterated the principles applicable both to the argument of manifest excess³ and the relevance of deprived background.⁴ The Court also reiterated the principles set out in *R v Morgan*⁵ that participation in the Koori Court process is more burdensome than a traditional plea hearing, and that this was a mitigating factor for sentencing, though the weight of that factor would depend on the circumstances of the case. After noting this background, the Court set out three factors which sentencing courts can use in assessing the weight to give participation in the Koori Court process:

(1) The fact that participation in the process is a voluntary one, may be confronting to the offender, and will likely involve him or her being 'shamed'. As noted in *Morgan*, participation in the process may of itself be rehabilitative.

(2) The fact that the offender is, rather than 'hiding behind counsel', taking the opportunity to personally:

(a) demonstrate his or her remorse for the offending;

(b) demonstrate insight into the reasons for, and the seriousness and effect of, the offending; and

(c) express any intention to reform and how that will be done, including by participating in available rehabilitation programs.

(3) The Court's assessment of the genuineness of the offender's statements during the sentencing conversation. That assessment should take account of all the information before the Court.⁶

The Court also considered an argument that judges in the County Court Koori Court should, as a matter of practice, request pre-sentence reports that take into account the Aboriginal offender's deprived background and the sentencing options that may be appropriate to use sentencing as a

³ *Honeysett v The Queen* [2018] VSCA 214, [37]–[38].

⁴ *Honeysett v The Queen* [2018] VSCA 214, [39]–[41].

⁵ (2010) 24 VR 230.

⁶ *Honeysett v The Queen* [2018] VSCA 214, [54].

restorative approach.⁷ The Court noted that while the County Court Koori Court has wide powers to receive information and evidence, the availability of report writers was limited. The Court therefore considered that it would be inappropriate to require pre-sentence reports focussed on an Aboriginal offender's rehabilitation needs. Such a change would be akin to law reform. Instead, the Court of Appeal noted that it is open to an offender to put forward any desired pre-sentence report.⁸

CONCLUSION

Honeysett provides valuable guidance for sentencing courts on exactly how participation in the Koori Court sentencing conversation can be relevant to sentencing. The Court recognised that the sentencing conversation can be a confronting and difficult process and can provide the sentencing court with insight into an offender's remorse, self-awareness and rehabilitation.

⁷ *Honeysett v The Queen* [2018] VSCA 214, [63], referring to the practice in Canada developed following *Gladue v The Queen* [1999] 1 SCR 688.

⁸ *Honeysett v The Queen* [2018] VSCA 214, [64]–[66].