IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No. B55 of 2019

BETWEEN:

HEIDI STRBAK
Appellant

and

THE QUEEN
Respondent

APPELLANT'S REPLY

Part I: Certification

1. I certify that this submission is in a form suitable for publication on the internet.

Part II: Reply

2. The respondent submits that the differing factual premise in *Miller*, to the extent that in that case there was no admissible evidential account from the defendant before the court at all, means that in this case, in which there were admissible accounts, the principles applied in *Miller* do not arise.[1]

3. This approach ignores the fact that that the learned sentencing judge did apply *Miller* as his Honour correctly considered that he was bound to do; so much so that he expressly directed

[1] Respondent's Submissions, at [19].

Bamberry Lawyers
2/17 Short St, Southport QLD 4215
Ph (07) 5527 0020 Fax (07) 5527 0277
Email: admin@bamberrylawyers.com.au
Ref: Mark Bamberry

himself to that effect at the outset of his judgment. Not only that, the prosecution also expressly accepted the application of that authority at first instance.[2]

4. Further, as explained in the appellant's submissions at [20], when paragraphs such as [37] and [121] of the judgment at first instance are read together, including the specific reference in support of the conclusion reached, that evidence of other witnesses "is not contradicted by evidence from [the appellant]", it is clear that *Miller* was in fact applied.

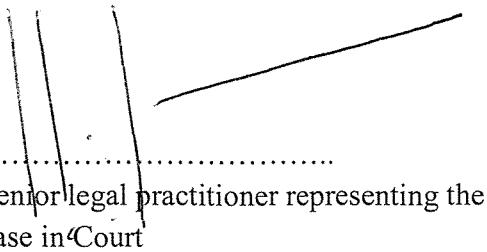
5. On the respondent's view, the implication is that the learned sentencing judge's direction to himself at [37] was entirely otiose, and had no actual application to the detailed and rigorous factual analysis that followed. Any contention now that the specifically cited principle was not actually invoked, or that the learned sentencing judge in fact engaged in some other distinguishable exercise,[3] is contrary to the plain language and reasoning of the judgment.

6. The Queensland Court of Appeal was confronted with a ground of appeal which specifically sought consideration by them of the correctness of a principle the learned sentencing judge had stated and applied in making finding of facts at sentence. The Court declined to consider that question on the same plainly flawed basis that the respondent here contends.

7. In this respect, the respondent submits that the Court of Appeal engaged sufficiently with the ground of appeal before it because "what was being asked of the Court below was clearly understood".[4] However, if the ground of appeal had been properly understood and engaged with, then it required more than being dismissed on the basis that "there was evidence from the applicant by her statements to police".[5] The effect of the judgment of the Court of Appeal was to dismiss the ground of appeal, and the issue of public importance it raised, without determining its substance. In those circumstances, it cannot be said that the ground of appeal was "clearly understood".

---

[2] CAB: p 18, l 45 – "The parties in this case accept that these principles apply..."
[3] Respondent's Submissions, at [30].
[4] Respondent's Submissions, at [25].
[5] CAB: p 113, l 51.



.....

Dated: 20 November 2019

Senior legal practitioner representing the case in Court

Name: Saul Holt QC
Tel: (07) 3369 5907
Fax: (07) 3369 7098
Email: sholt@8pt.com.au