Court ref:

Indictment:

IN THE COUNTY COURT OF VICTORIA

AT MELBOURNE

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

v

**XX**

**OUTLINE OF SUBMISSIONS ON BEHALF OF THE ACCUSED**

|  |  |
| --- | --- |
| Date of document: | 12 March 2023 |
| Filed on behalf of: | The Accused |
| Prepared by: | XXX  Telephone:  Fax: (03)  DX  XXX |

**Introduction**

1. Mr X will plead guilty to XXX. The offences carry the maximum penalty of XX years imprisonment.
2. These submissions will outline the materials to be relied upon, the nature and gravity of the offending, a summary of the matters in mitigation as well as briefly addressing the sentencing purposes outlined in s 5 of the *Sentencing Act* 1991 (**the Act**). This submission will be supplemented by oral argument including an outline of the accused’s personal history.
3. [Summary of ultimate submission and reason why];
4. ;
5. ;
6. ;
7. ; and
8. .

**Materials relied upon**

1. The following materials will be tendered on the appeal:
   1. XXX; and
   2. XXX;

**Gravity of the offending**

1. [Address the aggravating/worst/most troublesome/most concerning aspects of the offending].
2. [address the mitigating features, the things that lower the gravity].
3. [state where you say it sits on a scale of least to most grave].

**Personal history**

[this section is optional; if you client has a good story, then save it for oral subs]

**Chronology**

1. [This is flexible; sometimes you just want to outline the chronology since the accused has been charged because the Crown have dragged their heels, other times you will want to use the chronology to outline other sentences served or matter dealt with since the offending to help support a totality argument]:[[1]](#footnote-1)

|  |  |  |
| --- | --- | --- |
| **Date** | **Event** | **Source** |
|  |  |  |
|  |  |  |

**Matters in mitigation**

[the following headings are some examples]

Plea of guilty

1. [state whether the plea is early or not and specify the actual meaning of the plea; ie was someone saved the trauma or XXN, was the Court saved the burden of lengthy trial etc]

Age [old age or youth]

Relevance of the Accused’s physical ill-health

Relevance of the Accused’s mental ill-health

Totality

1. [state how totality is relevant] eg: It is submitted that the principle of totality is relevant to the sentencing process in two ways;
   1. It is relevant because the Accused stands to be sentenced for multiple offences committed at the same or at a similar time; and
   2. It is relevant because the Accused has been sentenced to two terms of imprisonment and a Community Corrections Order in Victoria served after the current offending for offences that pre-date the current offending.

Delay

1. [again, state how and why delay is relevant in your case] eg: It is submitted the sentencing principles regarding delay have some relevance, given the offending occurred over 21 years ago and the accused is now 73 years old. Although the reasons behind the delay may be largely attributable to the nature of the offending, the effects of the delay should still be considered.

*It is the effects of delay that are important for sentencing. As in R. v. Law, the prisoner’s age at the time of sentencing may mean that he is less likely to re-offend. His health or life expectancy may make service of a sentence of imprisonment more onerous than usual. There may be considerations of fairness, especially where the delay is attributable to the prosecution or there has been a significant period of uncertainty or curtailment of liberty after the offences came to light. There may be practical considerations that require a marked degree of leniency to be extended. The foregoing is by no means an exhaustive list and it omits the most important potential effect of delay, namely rehabilitation. The person standing for sentence may have been rehabilitated in one or more ways. He may have given up a form of substance abuse that contributed to the offending. He may have reordered his life. He may have changed morally so that, quite apart from being older, he would not be likely to re-offend. He may have suffered genuine remorse in the sense of repentance, not just sorrow at being caught and fear of punishment. So far as possible, a lengthy process of rehabilitation should not be halted or endangered by the sentence imposed*. [[2]](#footnote-2)

Serious offender provisions

1. [engage with the section and then make your argument as to it’s application] eg: It is conceded the accused falls to be sentenced as a serious sexual offender on all but three charges. In line with the Prosecution submission, it is submitted that a disproportionate sentence should not be imposed in all the circumstances. Whilst the protection of the community must be regarded as the principal purpose for which the sentence is to be imposed the accused does not pose a meaningful risk given his age and ill-health.

Impact of COVID-19

**Sentencing purposes**

Punishment and specific deterrence

General deterrence and denunciation

Rehabilitation

Protection of the community

**Disposition**

[the following headings are examples]

Availability of suspended sentence

Specific provisions of a CCO

Why a disparity between the head sentence and non-parole period if warranted

Why a crushing sentence must be avoided

Comparable cases and current sentencing practice

**Conclusion**

Your name

Counsel for Mr XXX

1. This chronology was prepared with the materials available to the accused from the original hand up brief. There may be some need for amendment when the Crown have had an opportunity to assess it. [↑](#footnote-ref-1)
2. *R v MWH* (2001) VSCA 196 at [18] [↑](#footnote-ref-2)