**Template Court of Appeal Merits Advice**

The merits advice assists Victoria Legal Aid (VLA) to decide funding applications for appeals against conviction and/or sentence to the Court of Appeal. Funding decisions are made in accordance with guidelines in the [VLA Handbook for Lawyers](https://handbook.vla.vic.gov.au/).

The merits advice template sets out the information the advice must include. To complete the template, use the F11 key to tab through each text field. Enter the information required or delete the field, as appropriate. If you have questions about the merits advice, email VLA’s Appeal and Strategy team at [Appellate\_Crime@vla.vic.gov.au](mailto:Appellate_Crime@vla.vic.gov.au).

## Advice on merit of appeal against conviction and sentence

This advice is for [Client's Name] regarding their prospects of appeal in relation to conviction and sentence following trialplea in the SupremeCounty Court in Melbourne. The date of sentence was [date].

For the following reasons, it is my opinion that:

* there are no reasonable grounds for the appeal; and
* there is no reasonable prospect that the Court would impose a sentence less severe than that originally imposed.

Please find **attached**:

1. Reasons for sentence (if available)
2. [Document name]

## Particulars

| Charge | Offence | Verdict | Maximum | Sentence | Cumulation |
| --- | --- | --- | --- | --- | --- |
| 1. |  |  |  |  |  |
| 2. |  |  |  |  |  |
| 3. |  |  |  |  |  |

**Total effective sentence:**

**Non-parole period:**

**Pre-sentence detention declared:**

**6AAA statement:**       with a non-parole period of      .

**Other relevant orders:** [for example, forfeiture]

**Date of sentence:**

## Factual background

(Insert brief (one paragraph) overview of facts and procedural history or attach crown opening and defence response)

[Enter text]

## Conviction appeal

### VLA guideline for a conviction appeal

VLA [Guideline 7.6](https://handbook.vla.vic.gov.au/handbook/3-criminal-law-guidelines/guideline-76-leave-to-appeal-against-conviction/conviction-and-sentence-in-court-of-appeal) applies to conviction appeals. This guideline incorporates the test in s 276(1) of the *Criminal Procedure Act (2009).*

**Guideline 7.6**

Victoria Legal Aid (VLA) may make a grant of legal assistance for leave to appeal against conviction or conviction and sentence in the Court of Appeal where:

* the applicant was sentenced to a term of immediate imprisonment or detention (unless the applicant is a child)
* there is a reasonable prospect that the court would reduce the total effective sentence, youth detention order, non-parole period or period prior to recognisance release order (unless the applicant is a child)
* there are reasonable grounds for the appeal, which is demonstrated by either:
  + the verdict of the jury being unreasonable or not supported having regard to the evidence
  + a substantial miscarriage of justice was caused by an error or irregularity in or in relation to the trial
  + a substantial miscarriage of justice was caused by any other reason
* it is reasonable to provide legal assistance, having regard to all of the circumstances including any benefit or detriment that may accrue to the applicant or to the public.

### What is the issue with this Conviction?

**Unreasonable verdict**

(Identify the factors or evidence that mean that the verdict was not open to the jury or the verdicts were inconsistent)

[Enter text]

**Error or irregularity**

(Identify any faults or unfairness, procedural or otherwise, in judicial directions or rulings, prosecutorial conduct or closing arguments or a jury irregularity)

[Enter text]

**Substantial miscarriage of justice for other reasons**

(Identify fresh evidence or any instances of incompetence of counsel)

[Enter text]

## Sentence appeal

VLA [Guideline 7.4](https://handbook.vla.vic.gov.au/handbook/3-criminal-law-guidelines/guideline-74-leave-to-appeal-against-sentence-in-court-of-appeal) applies to sentence appeals. It incorporates the test in ss 280(1) and 281 of the *Criminal Procedure Act (2009).*

**Guideline 7.4**

Victoria Legal Aid (VLA) may make a grant of legal assistance for leave to appeal against sentence where:

* the applicant was sentenced to a term of immediate imprisonment or detention (unless the applicant is a child)
* there are reasonable grounds for the appeal
* there is a reasonable prospect that the court would reduce the total effective sentence, youth detention order, non-parole period or period prior to recognisance release order (unless the applicant is a child).

**Additional guideline requirement where manifest excess is sole ground**

Where the applicant relies upon the ground of manifest excess as their sole ground of appeal, VLA may make a grant of legal assistance for leave to appeal where both:

* The above requirements are met
* VLA is satisfied that the sentence was wholly outside the range available to the sentencing judge.

### What is the issue with this sentence?

**Specific error**

(For example, double punishment, totality, application of *Verdins*, parity, technical error, erroneous findings of fact or law)

[Enter text]

**Manifest excess**

[Enter text]

**Supporting material**

In addition to outlining the argument under manifest excess, you must include material demonstrating how the sentence fell wholly outside the sentencing range available in your case. This should include: Reasons for Sentence; Comparable cases and; Sentencing Advisory Council statistics (where relevant).

[Counsel's name]

Date: