

***Vragovic v The Queen* [2007] NSWCCA 46 (27 February 2007) – New South Wales Court of Criminal Appeal**

‘Characterisation of seriousness’ – ‘Deterrence’ – ‘Grievous bodily harm with intent’ – ‘Physical violence and harm’ – ‘Protection orders’ – ‘Sentencing’ – ‘Women’

Charge/s: Grievous bodily harm with intent.

Appeal Type: Appeal against conviction and appeal against sentence.

Facts: The male applicant and the female victim had been married for some years before they divorced in mid-2003. The victim then commenced a relationship with another man and an apprehended domestic violence order was obtained protecting both the victim and her new partner. One evening, the victim was at home alone speaking on the telephone when the line went dead. The applicant then broke into the house and beat her with a piece of exhaust pipe and a shortened firearm. The applicant was sentenced to 12 years imprisonment, with a non-parole period of 8 years. This sentence was partially accumulated upon an earlier imposed sentence for grievous bodily harm with intent against the victim’s new partner. Accordingly, the effective overall sentence for both offences was 14 years imprisonment, with a non-parole period of 10 years.

Issue/s: One of the grounds of appeal was that the sentencing judge erred in his description that the offence ‘must be near the top of the range of seriousness’.

Decision and Reasoning: The appeal was dismissed. Adams J stated at [33]:

‘It was once thought in some circles that domestic violence was somehow less serious than criminal violence inflicted in other circumstances. I do not agree. In many cases of domestic violence a distinguishing characteristic is the notion of the offender that he (and it is almost invariably a male) is entitled to act as he did pursuant to some perverted view of the rights of a male over a female with whom he is or was intimately connected. It is this characteristic of self-justification which requires particular emphasis to be given, in cases of this kind, to the elements of general and personal deterrence. In this case, the appellant had already been arrested for another extremely vicious attack on [his ex-wife’s new partner] for motives which were plainly related to those for which he attacked his ex-wife. The notion that this was some kind of temporary aberration is, I think, disproved by this concatenation of events. There was no a sudden loss of control arising out of circumstances beyond his capacity to deal with. It was a cold, calculating and brutal attack upon a helpless woman at night in her own home’.

Here, the characterisation of the offence by the sentencing judge as 'near the top of the range of seriousness' related not to the actual physical injuries or to the overall seriousness of the offence but to the circumstances in which the injuries were inflicted. This characterisation was correct (See [34]).