

***R v Yaldiz* (1998) 2 VR 376 (9 October 1997) – Victorian Court of Appeal**

‘Attempted murder’ – ‘Background of emotional and physical abuse’ – ‘Exposing children’ – ‘Manifestly inadequate’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Sentencing’

Charge/s: Attempted murder.

Appeal Type: Crown appeal against sentence.

Facts: The respondent was convicted of the attempted murder by stabbing his wife. He attacked her in a frenzy in public in front of their children. At the time of the incident, the respondent was suffering from post-traumatic stress disorder. He was sentenced to six years imprisonment, with a non-parole period of four years.

Issue/s: One of the grounds of appeal was that the sentence was manifestly inadequate.

Decision and Reasoning: The appeal was allowed. Batt JA stated that *‘general deterrence is not eliminated but still operates, sensibly moderated, in the case of an offender suffering from a mental disorder or severe intellectual handicap’* at 381 (See also *R v Verdins*; *R v Buckley*; *R v Vo* [2007] VSCA 102 (23 May 2007) and *R v Tsiaras* [1996] 1 VR 398 (28 November 1995)). His Honour held that the sentence failed manifestly to meet the gravity of the respondent’s crime. The fact the offence occurred in a domestic situation did not decrease its heinousness. The crime warranted a sentence reflective of the considerations of general and specific deterrence, the community’s expectation of proper punishment and the possibility of rehabilitation (See 381).

Winneke P agreed with Batt JA but added his own observations. His Honour agreed at 382 that the sentence was manifestly inadequate and stated:

‘[T]his was a very serious example of the crime of attempted murder. It was premeditated and vicious and carried out upon a defenceless woman, in a public place, in the presence of the terrified children of both the respondent and the victim. I agree with the learned sentencing judge that the crime is not to be regarded as any the less heinous because it was committed against the background of an emotional domestic dispute. That is merely an explanation and not an excuse for the crime.’

Winneke P also held at 383 that *‘whether in the particular case a psychiatric condition should reduce or eliminate general deterrence as an appropriate purpose of punishment will depend upon the nature and severity of its symptoms and its effect upon the mental capacity of the accused’*.