

***R v Cotham* [1998] VSCA 111 (17 November 1998) – Victorian Court of Appeal**

‘Breach of intervention order’ – ‘Community protection’ – ‘False imprisonment’ – ‘Physical violence and harm’ – ‘Protection order’ – ‘Repeated and contemptuous breaches of intervention orders’ – ‘Sentencing’ – ‘Theft’

Charge/s: False imprisonment, theft x 3, breach of intervention order x 5, unlicensed driving.

Appeal Type: Appeal against sentence.

Facts: The male applicant and female complainant were divorced and the complainant had obtained multiple intervention orders against the applicant over a period of time. The applicant broke into the complainant’s home, threatened the complainant with a knife and tapped the complainant’s mouth and legs and tied her to the bed. He then took the complainant’s credit cards and left the premises in the complainant’s car. Some days later, the applicant again broke into the complainant’s house. The complainant fled the premises and the applicant took credit cards and various other items. On a final occasion, the applicant telephoned the complainant at work, trying to persuade her to drop the charges against him. All these incidents were in breach of an intervention order. The applicant was sentenced to a total effective sentence of two years and six months imprisonment, with a non-parole period of 15 months.

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

Decision and Reasoning: The appeal was dismissed. Charles JA held that the sentence could not be said to be manifestly excessive. The applicant committed serious crimes which adversely affected the victim and her children quite significantly. The applicant was contemptuous of the intervention order, disregarding it and its terms as and when he pleased. And he had been in court on two previous occasions for breaching the same order (See [16]). As per Charles JA at [14]:

‘Intervention orders must be strictly adhered to, and it is very much in the interests of the community that those against whom such orders are made be under no misapprehension that the courts will punish severely those who breach such orders. The applicant’s actions suggest that he believed he could breach the intervention order with impunity. Only by appropriately severe penalties can the courts make clear to the applicant and the broader community that such conduct will not be tolerated’.