

***Marrah v The Queen* [2014] VSCA 119 (18 June 2014) – Victorian Court of Appeal**

‘Aggravating factor’ – ‘Animal abuse’ – ‘Contravening an intervention order’ – ‘Physical violence and harm’ – ‘Protection order’ – ‘Rape’ – ‘Recklessly causing serious injury’ – ‘Sentencing’ – ‘Sexual and reproductive abuse’ – ‘Threat to kill’

Charge/s: Recklessly causing serious injury, rape, threat to kill.

Appeal Type: Appeal against sentence.

Facts: There numerous family violence incidents between the male applicant and the female respondent during their relationship. A family violence intervention order was active at the time of offending. On the day of offence, the applicant and the complainant were arguing after the applicant accused her of having sexual relations with other men. The applicant punched the complainant, picked her up by her hair and threw her to the floor, kicked her several times, and banged her head on the floor. He also grabbed her around the neck such that she could not breathe and the applicant repeatedly shoved his fingers in the complainant’s vagina. He retrieved two knives and said he would kill her and her dog. The applicant was sentenced to 12 years imprisonment with a non-parole period of ten years.

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

Decision and Reasoning: The appeal was allowed. The gravity of the applicant’s conduct was aggravated by the fact the applicant was subject to a family violence intervention order. As Tate JA said at [25]:

‘The gravity of the offending was aggravated by the fact that the applicant was at the time the subject of an intervention order, which he flagrantly disregarded. Offending of this nature is too often perpetrated by men whose response to difficulties in a relationship is one of possessive, violent rage. It goes without saying that such a response, to what is a common human situation, is utterly unacceptable. The sentences must convey the unmistakable message that male partners have no right to subject their female partners to threats or violence. The sentences must be of such an order as to strongly denounce violence within a domestic relationship’.

However, the orders for cumulation did not produce an aggregate sentence that was commensurate with the gravity of the whole of the offending (See [21]-[22], [27]-[28]).