

***R v Boaza* [1999] VSCA 126 (5 August 1999) – Victorian Court of Appeal**

‘Attempted murder’ – ‘Denunciation’ – ‘Deterrence’ – ‘Domestic homicide’ – ‘Physical violence and harm’ – ‘Sentencing’

Charge/s: Attempted murder.

Appeal Type: Appeal against sentence.

Facts: The male applicant and the female complainant formed a relationship, which the complainant subsequently ended. One evening, the applicant tailgated the complainant, forcing her to stop her vehicle. He dragged her out of the car and threw her down an embankment. Stating that he was going to kill her, the applicant punched the complainant and stabbed her multiple times before he was restrained by passers-by. Despite losing massive amounts of blood, the complainant survived. The applicant was sentenced to 14 years imprisonment with a non-parole period of 11 years.

Issue/s:

1. The sentence was manifestly excessive.
2. The sentencing judge failed to give sufficient weight to the applicant’s plea of guilty and other matters put in mitigation on his behalf.

Decision and Reasoning: The appeal was dismissed, with separate reasoning provided by Chernov JA and Winneke P but each concurring with the final orders. Chernov JA found that the sentence could not be said to be manifestly excessive in the circumstances. The offence was in the upper range of the scale of seriousness for the crime of attempted murder – it was a brutal, cowardly and unprovoked attack induced because the complainant had left their relationship. The applicant showed no remorse and repeatedly lied to police. A sentence reflecting the principles of denunciation and general and specific deterrence was warranted in the circumstances. Further, without the intervention of others the applicant would have killed the victim. Finally, it was clear the sentencing judge took into account all relevant mitigating factors (See [27]-[31]).

Winneke P similarly held that the sentence could not be said to be manifestly excessive. His Honour said at [50]:

'[T]his was truly a case where the court's sentence must mark the community's condemnation of the applicant's conduct and must be such as to deter others like-minded from resorting to such conduct as a means of resolving emotional disputes. The type of conduct engaged in by the applicant, reflecting as it does a lack of self-discipline and self-centred lack of respect for the freedom of choice of his victim, was rightly viewed by his Honour, I think, as a serious example of this crime'.