

***R v Duncan* [2007] VSCA 137 (22 June 2007) – Victorian Court of Appeal**

‘Aggravating factor’ – ‘Breach of intervention order’ – ‘Breach of intervention orders’ – ‘Damaging property’ – ‘Deterrence’ – ‘Double punishment’ – ‘Following, harassing, monitoring’ – ‘Intentionally causing injury’ – ‘Physical violence and harm’ – ‘Protection orders’ – ‘Sentencing’ – ‘Totality’

Charge/s: Damaging property, intentionally causing injury, breach of an intervention order.

Appeal Type: Appeal against sentence.

Facts: The male applicant engaged in protracted stalking of the female complainant for a number of years, in an attempt to initiate a relationship. The complainant obtained an intervention order against the applicant. In breach of this order, the applicant attended the complainant’s workplace, smashed her car’s windscreen and caused injury.

Issue/s: Some of the issues were that –

1. The sentencing judge failed to have sufficient regard to the need to avoid double punishment and thus the sentences imposed were excessive. This was based on the principle of double jeopardy i.e. where two offences of which an offender stands convicted contain common elements, it is wrong to punish the offender twice for the commission of the elements that are common (*Pearce v The Queen*).
2. The trial judge failed to have sufficient regard to the principle of totality.

Decision and Reasoning: The appeal was dismissed. Vincent JA remarked at [37] that:

‘I would add that the sentencing judge was clearly correct in attributing a high level of seriousness to the appellant’s conduct and reflecting that in the sentences imposed. Not only did the appellant’s conduct involve a savage and sustained attack upon his unfortunate victim but, it must not be forgotten she had sought the protection of the law against his continued and frightening criminal harassment. He responded to her endeavours, and to the imposition of a sentence of imprisonment upon him, by seeking to punish her and damage her property. Obviously the community cannot accept that those who avail themselves of its protection may be subject to revenge or retribution if its structures and that protection are to possess credibility and operate to deter potential offenders’.