

***Curypko v The Queen* [2014] VSCA 192 (29 August 2014) – Victorian Court of Appeal**

‘Context evidence’ – ‘Delay’ – ‘Denunciation’ – ‘Deterrence’ – ‘Intentionally causing serious injury’ – ‘Just punishment’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Victim impact statement’

Charge/s: Intentionally causing serious injury.

Appeal Type: Appeal against sentence.

Facts: The female complainant was the male applicant’s de facto partner. The applicant repeatedly and brutally assaulted the complainant over a four year period. The charged offence occurred in 1989 and concerned a ten hour assault by the applicant which included striking the complainant multiple times and breaking her jaw, hitting her with various objects, heating up a knife and dragging this across her neck, and stabbing her with a syringe. The applicant was sentenced to five years imprisonment, with a non-parole period of two and a half years. There was a substantial delay between the offending and the applicant being charged – some 24 years.

Issue/s:

1. The sentence was manifestly excessive in light of the maximum penalty, the long delay and the applicant’s rehabilitation during that period, the guilty plea, the applicant’s youth when he offended, and sentencing practice at the time of offence.
2. The sentencing judge erred in concluding that the gravity of the offending required the applicant’s youth at the time of offending, the delay and his rehabilitation in the interim must ‘give way’.
3. The sentencing judge erred in departing from the agreed statement of facts and in relying on the Victim Impact Statement as evidence of uncharged offending providing context for the charged offence.

Decision and Reasoning: The appeal was dismissed. First, the sentence was not manifestly excessive. Ashley JA acknowledged that the delay was substantial and as such merited substantial consideration as a matter of fairness to the accused. During that period, the applicant had ‘reformed’ (at [65]), was in a stable relationship, had a child, and was able to demonstrate rehabilitation. Notwithstanding this, the sentence imposed at trial, though harsh, was within the discretion of the primary judge.

Second, the sentencing judge did not fall into error by concluding that mitigating factors including delay, rehabilitation and the applicant's youth, 'had to take a back seat to circumstances which favoured a greater sentence' (at [41]). The seriousness of the offending as an example of severe domestic violence meant that just punishment, denunciation and general deterrence took prime consideration. An argument that the delay in bringing the proceedings reduced the need for general deterrence was dismissed. The delay here was connected to the complainant's fear and trauma and then further delay was caused by change in investigators (See [53]-[56]).

Third, the sentencing judge did not err in referring to statements made by the victim to the police, in supplementing the general description of the assaults relied upon for contextual purposes by recourse to statements made by the complainant, and by referring to the victim impact statement. In particular, the circumstances of earlier assaults were, as the judge repeatedly stated, admitted for contextual purposes only (See [34]-[39]).