

DPP v Smeaton [2007] VSCA 256 (15 November 2007) – Victorian Court of Appeal

‘Blaming the victim’ – ‘Intentionally causing serious injury’ – ‘People affected by substance misuse’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Women’

Charge/s: Intentionally causing serious injury.

Appeal Type: Crown appeal against sentence.

Facts: The respondent saw the victim, his ex-girlfriend, at a Shopping Centre and became abusive and aggressive after she refused to help him ‘score’ heroin. He punched her and kicked her repeatedly in the head when she fell to the ground. The respondent was sentenced to three years imprisonment, with a non-parole period of 20 months.

Issue/s: The sentence was manifestly inadequate.

Decision and Reasoning: The appeal was allowed. It was possible to infer that after being refused heroin, the respondent ‘snapped’ and his moral culpability was therefore less than it otherwise might have been. However, having said that, *‘this was a vicious, cruel and unprovoked attack on a small and virtually defenceless woman. To kick anyone in the head is grossly dangerous. To do it more than once, deliberately, is courting the worst kind of disaster. Fortunately, that did not occur. But her injuries were serious, and they are to some extent likely to be permanent’*. The offence was aggravated by the fact that it was committed in a busy shopping centre and it represented a gross breach of trust the victim reposed in the respondent. Accordingly, the respondent’s moral culpability was high (See [13]). Given the nature and gravity of the offending and the extent of the respondent’s criminal history, Nettle JA held the sentence was manifestly inadequate (See [16]).

Dodds-Streeton JA added further comments regarding some particularly troubling features of this offending. At [21], Her Honour stated:

‘Violence, and in particular violence by men against women as a means of control in current relationships or in relationships which have ended, is a prevalent and even critical social evil. As in the present case, the perpetrator not uncommonly expresses remorse immediately after a violent assault, but nevertheless seeks to blame the victim for causing the attack. Although the respondent did appear to regret the assault, as the sentencing judge observed, his letter to the court denigrated the victim’s character and effectively sought to blame her for his backsliding into drug use and for provoking the attack. In the police interview, he denied the crime, at one point apparently claiming that the victim had assaulted him, and called her a lying dog’.