

***DPP v Lade (a pseudonym)* [2017] VSCA 264 (21 September 2017) – Victorian Court of Appeal**

‘Attempting to pervert the course of justice’ – ‘Breach of family violence intervention order’ – ‘Family law’ – ‘Intimate photos’ – ‘Post-separation violence’ – ‘Property proceedings’ – ‘Sexual assault’ – ‘Stalking’ – ‘Suicide threats’ – ‘Technology and abuse’

Charges: Sexual assault x 1; Stalking x 2; Attempting to pervert the course of justice x 1; Contravention of family violence intervention order (‘FVIO’) x 1; Making threats to kill x 1; threatening to distribute intimate images of another person x 1.

Appeal type: Appeal against sentence.

Facts: The victim was the defendant’s ex-wife. The offences occurred over an 18-month period after they had separated ([7]). The offences included: the defendant forcing the victim onto her bed and ejaculating on her; threatening to distribute intimate photos to the victim’s father and employer if she did not agree to his terms for their property settlement; entering her house and leaving videos of himself; and sending mail to her house ([7]-[22]); threatening to kill himself if the victim did not drop the charges (attempting to pervert the course of justice). The defendant was originally sentenced to 16 months’ imprisonment (see table at [2]).

Issues: Whether the sentence was manifestly inadequate.

Decision and Reasoning: The appeal was allowed.

The Court (Priest, Hansen and Coghlan JJA) re-sentenced the defendant to 2 years and 11 months imprisonment with a non-parole period of 2 years. The primary judge treated the offences as ‘situational in the sense that it was based within a relationship, not that that condones it in any way, shape or form’ [34]. But the Court of Appeal placed more emphasis on the fact that the domestic context, breach of FVIO and offending while in jail were all aggravating factors [49].

The Court appeared to endorse the DPP’s description of the sexual assault as ‘particularly serious ... being violent, non-consensual and humiliating for C who was treated as though a marital chattel’ [40].