

***R v Pham* [2005] VSCA 57 (7 March 2005) – Victorian Court of Appeal**

‘Children’ – ‘Deterrence’ – ‘Intentionally causing serious injury’ – ‘Physical violence and harm’ – ‘Protection order’ – ‘Sentencing’

Charge/s: Intentionally causing serious injury x 2.

Appeal Type: Appeal against sentence.

Facts: The male applicant was in a relationship with the female victim and lived with her and her son, the other victim, for a few months. The relationship ended but they maintained an association. The applicant married the victim’s sister but started to harass both the victim and her sister. The victim obtained an intervention order protecting her and her children. In breach of the intervention order, the applicant entered into the victim’s house. He stabbed her with a knife to the face, mouth, chest and neck approximately eight times (count 3). The victim’s son tried to intervene but the applicant struck him with the knife twice times, almost severing the child’s hand (count 4). The applicant was sentenced to a total effective sentence of ten years imprisonment, with a non-parole period of seven years.

Issue/s: The sentencing discretion miscarried as the judge was required to sentence the applicant on the basis that the verdict on count 4 rested not upon a finding by the jury of the deliberate infliction of serious injury to the victim but upon their application of the instructions of the trial judge concerning the concept of transferred malice.

Decision and Reasoning: The appeal was dismissed. There was no error on the part of the sentencing judge. His Honour did not impose a sentence on the basis that the applicant deliberately stabbed the victim (See [14]-[19]). Vincent JA further noted that the proper exercise of the sentencing discretion in this case required an order that effectively cumulated part of the sentence imposed on count 4 upon the sentence imposed on count 3. This was necessary to reflect the seriousness of the two separate offences and the particular aggravating features attaching to each, some of which were common and other not. In this context, it was particularly serious that the applicant act in flagrant violation of an intervention order the female victim had obtained to protect herself and her children. This is because the intervention order is:

‘... designed by parliament to provide the protection of the law to vulnerable individuals, usually, as in this case, women and children, who legitimately fear for their safety. Offenders who disregard such orders and occasion injury to persons whose personal security is intended to be guaranteed through this means must anticipate that an extremely stern view will be adopted by the courts of their conduct and, save in the most unusual circumstances, will be subject to condign punishment’ (See [21]-[22]).