

***Fitzpatrick v The Queen* [2016] VSCA 63 (6 April 2016) – Victorian Court of Appeal**

‘Common assault’ – ‘Criminal damage’ – ‘Exposing children’ – ‘Following, harassing, monitoring’ – ‘Persistent contravention of a family violence intervention order’ – ‘Physical violence and harm’ – ‘Protection orders’ – ‘Repeated breach of protection orders’ – ‘Risk factors’ – ‘Strangulation’ – ‘Theft’ – ‘Threat to kill’ – ‘Women’

Charge/s: Persistent contravention of a family violence intervention order, common assault, threat to kill, theft x 2, criminal damage.

Appeal Type: Appeal against sentence.

Facts: The principal victim of the offending was the applicant’s former female domestic partner. After the relationship broke down, the victim obtained a family violence intervention order, which the applicant repeatedly breached. One night, the applicant broke into the victim’s house and wrapped a telephone cord tightly around her neck. He threatened to kill her and cut off 40cm from her hair, saying he wanted to disfigure her to the point that no-one else would find her attractive. He then took the victim’s phone, house and car keys and drove away. The applicant was sentenced to a total effective sentence of four years and nine months with a non-parole period of two years and nine months.

Issue/s: The sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. The objective gravity of the offending warranted severe punishment, certainly extending to a sentence of the overall length here. In that regard, Beach JA noted that the persistent contravening of a family violence intervention order was itself extremely serious and was ‘*no mere breach of an intervention order of the kind so frequently seen*’. The conduct on the night of 29 October 2014 was also extremely serious because it must have been terrifying for the victim, the applicant knew there were children in the house, and the assault was not spontaneous. This was not an act brought about by a temporary loss of self-control, resulting from something said or done by the victim. His Honour stated that instead, ‘it was an act of wanton cruelty intended to humiliate and terrify a defenceless woman in her own home’ (See [37]-[41]).