

***R v MFP* [2001] VSCA 96 (15 June 2001) – Victorian Court of Appeal**

‘Aggravating factor’ – ‘Domestic context as an aggravating factor’ – ‘Physical violence and harm’ – ‘Recklessly causing serious injury’ – ‘Risk factors’ – ‘Sentencing’ – ‘Strangulation’ – ‘Women’

Charge/s: Recklessly causing serious injury.

Appeal Type: Appeal against sentence.

Facts: The applicant was married to the victim and they had three children together. The applicant forcibly dragged his wife out of the house and into the shed, where he had set up a noose. There was a struggle and he placed a noose so tightly around her neck that she passed out. The applicant was sentenced to four years imprisonment with a non-parole period of one year.

Issue/s: One of the grounds of appeal was that the sentencing judge erred in finding that the offence was aggravated because it occurred in a domestic context.

Decision and Reasoning: The appeal was dismissed. The sentencing judge in fact stated that the legislature and the community regarded the offence of recklessly causing serious injury as serious, an attitude that was correct particularly in a domestic context. Ormiston JA held that the sentencing judge was entirely justified as seeing this as a factor to be born in mind (See [19]). His Honour further stated that:

‘ I think [the domestic context] can be seen to be aggravating both as to its potential consequences and also inasmuch as a husband (or a wife) is in a privileged position in relation to a spouse. They each know the everyday movements, the habits, the likes and dislikes, the fears and pleasures of their spouse, which might enable them not only to effect an attack more easily on their victim but also to devise the kinds of attack which could more seriously affect their spouse, not merely physically, but so as to cause mental anguish. Now it was not suggested that there were special advantages which the applicant had in the present case, but he was certainly able to know whether the children would be up or asleep and where they would be, and where to take his wife to gain privacy for this cruelly devised attack. The matter need not be examined any further, for in truth the advantages that he had, including that of surprise, justified the judge in holding that it was proper to view more seriously this attack occurring in the domestic context of this family. The consequences for both his wife and children were manifest, as fairly could have been expected’ (See [20]).