

***Pasinis v The Queen* [2014] VSCA 97 (22 May 2014) – Victorian Court of Appeal**

‘Deterrence’ – ‘Effects of family violence’ – ‘Intentionally causing serious injury’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Serious consequences for victims’

Charge/s: Intentionally causing serious injury (ICSI) x 2.

Appeal Type: Appeal against sentence.

Facts: The male applicant and the female complainant were in a de facto relationship. On the day of the first offence, the applicant began punching the complainant and went to kick her in the face. The complainant put up her left arm to protect herself and the applicant’s kick broke her arm. After some delay, the applicant took her to the hospital. Three months later, the applicant started hitting the complainant and again the complainant put her arm up to defend herself and the applicant broke her right arm. Despite her excruciating pain, the applicant did not take the complainant to the doctor until the following day.

When the incidents were first charged, the applicant and the complainant had resumed their relationship and concocted a false version of events to exonerate the applicant. The relationship subsequently ended and the complainant went to the police. They were both charged with conspiracy to pervert the course of justice. The applicant was also charged with two counts of ICSI and sentenced to eight years imprisonment with a non-parole period of six years.

Issue/s: The sentence was manifestly excessive and the sentencing judge failed to give appropriate consideration to the totality principle.

Decision and Reasoning: The appeal was dismissed. The sentence imposed could not be said to be manifestly excessive. Further, the totality principle was appropriately applied. Kyrou AJA made a number of observations about family violence that have been cited in a number of subsequent judgments. The Court considered the serious consequences of violent domestic assaults and emphasised the importance of general deterrence in cases involving offences committed in the context of family violence. As at [53]-[54]:

‘Historically perpetrators of family violence were rarely prosecuted. Even when offenders were convicted of such offences, they often received lenient sentences. Fortunately the criminal law now gives greater recognition to the devastating effects of family violence. It has also been recognised that women who are killed by their husband, boyfriend or de facto partner have frequently been assaulted by them many times previously. This makes both specific and general deterrence very important factors in sentencing men who assault their partner.

The effects of family violence are now well documented. They are not confined to physical injury. Victims often feel responsible for the violence and ashamed that they were not able to prevent the perpetrator from offending. As occurred in this case, it is common for victims to deny or conceal that their partners have assaulted them until the violence becomes unbearable ... Victims who have been dominated, controlled and beaten by their partners over a significant period experience serious and longlasting psychological trauma. As in the present case, the physical effects of the violence and its erosion of the victim's confidence can also affect their ability to participate in paid work and have other serious financial effects'.

His Honour reiterated at [57]:

'General deterrence is of fundamental importance in cases of domestic violence. The victims of such violence are often so enveloped by fear that they are incapable of either escaping the violence or reporting it to the authorities. The key to protection lies in deterring the violent conduct by sending an unequivocal message to would-be perpetrators of domestic violence that if they offend, they will be sentenced to a lengthy period of imprisonment so that they are no longer in a position to inflict harm'.