***Kanakaris v The Queen* [2010] VSCA 120 (28 May 2010) – Victorian Court of Appeal**

'Aggravated burglary' – 'Aggravating factor' – 'Breach of protection order' – 'Common assault' – 'Deterrence' – ' Exposing children' – 'Intentionally causing injury' – 'Intentionally causing serious injury' – 'Kidnapping' – 'Physical violence and harm' – 'Protection order' – 'Sentencing' – 'Threat to kill'

Charge/s: Common assault x 4, intentionally causing injury x 3, threat to kill x 2, aggravated burglary, kidnapping, intentionally causing serious injury.

Appeal Type: Appeal against sentence.

Facts: The male applicant pleaded guilty to 13 offences, involving appalling physical violence, humiliation and abuse committed against his female de facto partner, sister, mother and four year old daughter. The total effective sentence was nine years and three months' imprisonment, with a non-parole period of seven years.

Issue/s: Some of the grounds of appeal included –

1. The sentencing judge failed to give sufficient weight to the applicant's plea of guilty.
2. The sentencing judge erred in fixing the non-parole period.

Decision and Reasoning: The first ground of appeal was dismissed but the second ground of appeal allowed. The applicant's contention that the sentencing judge failed to give sufficient weight to his plea of guilty was dismissed. The offending here was extremely serious. The conduct involved constituted breach of an intervention order, it was well planned and involved the use of an accomplice, the applicant was armed and threatened his partner, he took away her children, and she was unable to escape for six hours. His Honour also noted the that maximum penalties for aggravated burglary and intentionally causing serious injury as 25 years and 20 years respectively (See [70]-[72]). It was clear that the trial judge incorporated the discount for the plea of guilty in her orders of accumulation, which were only 12 months on the base sentence.

However, the appeal was allowed on the basis of the non-parole period. It was noted that a seven year non-parole period is ‘very substantial’. Coghlan JA concluded that the primary judge must have imposed such a substantial non-parole period because of a ‘guarded view taken of the applicant’s prospects of rehabilitation’ (at [83]). However, the applicant had no criminal history and had pleaded guilty. As such, His Honour concluded that the primary judge erred in imposing such a long non-parole period on the basis of her conclusion on rehabilitation alone. The non-parole period was reduced to six years.

Neave JA agreed with Coghlan AJA but made some brief remarks about the complaint of manifestly excess. She noted at [4]:

‘Notwithstanding the mitigating circumstances to which the learned sentencing judge referred, the shocking violence which the offender inflicted on those he professed to love required strong denunciation and considerable emphasis on both general and specific deterrence’.