

## ***R v Elias* [2007] VSCA 125 (19 June 2007) – Victorian Court of Appeal**

‘Battered woman syndrome’ – ‘Theft’ – ‘Verdins principles’ – ‘Where the victim is an offender’

Charge/s: Theft x 19.

Appeal Type: Appeal against sentence.

Facts: The offending took place between 2000 and 2004 when the female applicant was employed as an accountant at a firm. She diverted funds paid by bankrupt estates for creditors to her own accounts. The applicant was sentenced to a total effective sentence of 20 months imprisonment, with a non-parole period of 12 months. The sentencing judge accepted evidence that the applicant’s offending behaviour was symptomatic of ‘battered woman syndrome’. There was a history of physical and sexual abuse at the hands of the applicant’s husband.

Issue/s: One of the issues was that the sentencing judge erred:

- (a) In failing to sufficiently reduce the weight to be accorded to specific deterrence and moral culpability on account of the applicant’s psychological condition; and
- (b) In failing to sufficiently reduce the weight to be accorded to general deterrence on account of the applicant’s psychological condition.

Decision and Reasoning: The appeal was dismissed. The sentence imposed did not suggest that the sentencing judge failed to give any or sufficient weight to the impact of the applicant’s mental state upon the significance of general deterrence, specific deterrence or moral culpability. His Honour’s sentence, reflecting moderation in individual sentences, and a small extent of cumulation, was in fact merciful (See [16]-[28]).

In obiter, Ashley JA observed that the *Verdins* principles had not as of yet been applied in respect of offences of this kind, where the offender asserts battered woman syndrome, as the relevant mental impairment, reduced moral culpability and the weight to be accorded to specific and general deterrence in sentencing. The battered woman/learned helplessness situation had typically been raised in homicide cases in relation to the question – why the offender did not leave their abusive partner? His Honour left open the possibility of the *Verdins* principles applying in a case where learned helplessness is given as the explanation for the commission of, for example, property offences. But this case was not an appropriate vehicle for making such a determination because there was insufficient evidence of the impairment to the applicant’s functioning arising from the history of abuse (See [12]-[14]).