

***Stapleton v The Queen* [2020] VSCA 147 (4 June 2020) – Victorian Court of Appeal**

‘Aggravated burglary’ – ‘Application for leave to appeal against sentence’ – ‘Gambling’ – ‘Guilty plea’ – ‘People affected by substance misuse’ – ‘Physical violence and harm’ – ‘Separation’ – ‘Theft’

Charge(s): Aggravated burglary x 1; intentionally causing injury x 1; intentionally damaging property x 1; theft x 1; unlawful assault x 1

Case type: Application for leave to appeal against sentence

Grounds: The sentence was manifestly excessive, in particular:

1. the sentences imposed on the charges of aggravated burglary, intentionally causing injury and unlawful assault were manifestly excessive;
2. the learned sentencing judge placed excessive weight on a finding of a lack of remorse, and insufficient weight on compelling mitigating factors (such as his guilty plea, prior good character and the absence of prior convictions); and
3. the orders for cumulation infringed the totality principle and produced a manifestly excessive total effective sentence and non-parole period.

Facts: In 2018, the applicant man pleaded guilty to a series of offences committed against his wife of 20 years (the victim). The offending occurred in the context of the breakdown of their domestic relationship, in the early hours of the morning at the victim’s home. He broke into the house, pushed the victim against the wall, and assaulted her boyfriend. When the victim sought to intervene, the applicant verbally abused her and threw her against the bedroom wall, causing her head to go through the plaster. The applicant continued to punch the victim’s boyfriend, and after another attempted intervention by the victim, he threw her across the room. He also damaged her boyfriend’s car. The applicant left the premises but returned about half an hour later. Once again, he barged through the front door, entered the bedroom, grabbed the victim’s hair and threw her against the wall, and continued to physically abuse her boyfriend. He also punched the victim in the face. While she was attempting to contact her friend, the applicant snatched her phone and left the house with it. The applicant was arrested later the same morning.

At sentence, the judge noted that the applicant had been drinking heavily and told police that there had been a slow build-up of emotion. His account to police was also seen as an attempt to minimise his conduct ([23]-[25]). Further, the sentencing judge stated that "offending of this nature is all too often perpetrated by men who respond to difficulties in a relationship, with possessive, violent rage" ([27]). Mention was also made to the victim impact statements which detailed the applicant's history of domestic violence towards the victim, specifically in the form of mental abuse ([28]-[29]). The applicant had a lengthy history of heavy drinking and extensive difficulties with gambling, which resulted in the sale of the family home in order to pay his debts ([32]). The judge characterised the motive for the applicant's offending as a desire to exact revenge for the victim's having interfered in his relationship with another woman, and observed that his return to the house on the second occasion demonstrated a degree of premeditation. The applicant had no prior convictions ([33]). His guilty plea was not made at the earliest opportunity, and in his record of interview, he sought to downplay the gravity of the offending, blamed the victim for his behaviour, and falsely denied having punched her boyfriend ([34]). In these circumstances, her Honour was not persuaded that the applicant "deeply regretted his wrongdoing and desired to atone for it". While there was some level of remorse, this was not given much weight ([36]). Her Honour also explained that a combination sentence was inappropriate as the offending was too serious ([38]). He was sentenced to a total effective sentence of 3 years' and 7 months' imprisonment, with a non-parole period of 2 years.

Held: The Court of Appeal granted leave to appeal and dismissed the appeal. It stated that "aggravated burglary, where the offender's intent is to assault and injure a former domestic partner, must always be regarded as an offence of a serious nature" ([60]). The appeal ground of manifest excessiveness was difficult to maintain in light of the aggravated burglary and serious assaults committed on that second occasion ([62]). The Court held that the sentencing judge took into account and gave weight to all relevant mitigating factors. The applicant did not succeed in his submission that the judge erred in her finding that little weight should be given to his remorse, as she "took great pains to explain why, putting to one side the remorse associated with the plea of guilty, she could give little weight to what the applicant had told various third parties about how he felt" ([64]-[65]).