

***R v Gojanovic (No 2)* [2007] VSCA 153 (14 August 2007) – Victorian Court of Appeal**

‘Deterrence’ – ‘Murder’ – ‘Physical violence and harm’ – ‘Sentencing’

Charge/s: Murder.

Appeal Type: Appeal against conviction and appeal against sentence.

Facts: The female deceased entered into a de facto relationship with the applicant. The relationship deteriorated, in part due to the deceased’s gambling habit. The relationship ended and the deceased moved into separate premises. The applicant started stalking her, largely to monitor her treatment of his son. The applicant followed her home one evening, clubbed her on the head a number of times with a rubber mallet and strangled her with cord. The applicant was found guilty by a jury of murder and was sentenced to 20 years imprisonment, with a non-parole period of 15 years.

Issue/s: One of the issues was that the sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. The sentencing judge was justified in concluding that the applicant was not remorseful for killing the victim. The evidence before the judge was of a vicious, determined and brutal attack by a person with a significant advantage in size and weight over his victim. The sentencing judge was further entitled and correct to regard general deterrence as a significant factor in such a case in the exercise of his sentencing discretion. As per the Court at [140]:

‘[O]ur courts have stated on more than one occasion that in cases of killings of the type which occurred here in a “domestic” setting, the concept of general deterrence is an important and weighty sentencing consideration. The sentence, in such cases, must be such as to provide a strong message that outbursts of homicidal rage, in contexts such as this case are totally unacceptable and will be dealt with by stern sentences of the type imposed upon the applicant’.

The Court continued at [141]:

‘As (the sentencing judge) correctly observed many individuals have to confront circumstances of difficulty in the course of the breakdown of relationships. The Court must send a clear message to estranged parents that custody and other such disputes are to be resolved by proper processes and not by horrendous violence such as that imposed on the deceased in this case. In all the circumstances it cannot be said that the sentence imposed in this case is manifestly excessive’. See also *R v Gojanovic* [2005] VSC 97 (27 January 2005).

Note: the High Court refused special leave to appeal (see *Gojanovic v The Queen* [2011] HCATrans 66).