

## ***Baker (a pseudonym) v The Queen* [2021] VSCA 158 (9 June 2021) – Victorian Court of Appeal**

‘Application for leave to appeal against sentence’ – ‘Attempt to pervert the court of justice’ – ‘Coercive control’ – ‘Emotional and psychological abuse’ – ‘Guilty plea’ – ‘History of domestic and family violence’ – ‘Intellectual impairment’ – ‘Manifest excess’ – ‘People affected by drugs or alcohol’ – ‘People affected by trauma’ – ‘People with illness or impairment’ – ‘Physical violence and harm’ – ‘Sexual and reproductive abuse’ – ‘Threat of image abuse’ – ‘Threat of suicide’

Proceedings: Application for leave to appeal against sentence.

Facts: The male applicant pleaded guilty to 14 charges arising out of abuse of his female domestic partner over a period of 18 months. He sought leave to appeal in relation to charges 5, causing injury recklessly, and 8, attempting to pervert the course of justice.

Charge 5 related to causing injury by pushing the victim’s face into a pot of boiling water, following which he did not call an ambulance and instructed the victim to conceal his role in her injuries and return home the same day, not remaining in hospital for treatment. There was dispute as to whether permanent injury was caused. The offending was in breach of a protection order, occurred after earlier offending against the same victim and when the applicant had only just been released from prison. Charge 8 related to sending a large number of text messages to the victim demanding the withdrawal of charges against him, threatening variously to keep their stillborn child’s ashes and urn from her, distribute intimate images of her and commit suicide stating it would be her fault if he did so.

The applicant had a history of prior violent offending (having only just been released from jail) including against the victim, had intellectual impairment, a traumatic upbringing and was abusing methylamphetamine at the time of the offending. It took place in the context of a history of violence, manipulation and coercion against the victim and sought to exploit her emotional and psychological vulnerability by threatening her ability to access the ashes of her stillborn child and also threatening her dignity and right to privacy with the exposure of intimate images.

### Grounds:

*Ground 1*: The sentence imposed on indictment charge 5 is manifestly excessive in all the circumstances.

*Ground 2*: The sentence imposed on indictment charge 8 is manifestly excessive in all the circumstances.

*Ground 3*: The cumulation order fixed in respect of charge 8 is manifestly excessive in all the circumstances.

Held: leave to appeal refused.

*Ground 1*: The court held that notwithstanding the mitigating factors raised by the applicant which ought to be taken into account, this was horrific violence inflicted on a woman by her domestic partner in her own home. The offending was at the upper end of the range with a maximum penalty of 5 years imprisonment, and 3 years was within the appropriate range:

“In all the circumstances, the infliction of such horrific violence against a woman at the hands of her domestic partner in their own home called for denunciation, just punishment and general deterrence, especially in the context of persistent defiance of a family violence intervention order and bearing in mind the applicant’s criminal history. In that context, specific deterrence also remained a relevant consideration. We accept that the mitigating features to which the applicant referred were matters of weight that fell to be taken into account, as we have discussed. However, even when that is done, we are unable to conclude that the sentence was outside the range available to the sentencing judge. To the contrary, bearing in mind that this was an offence at the upper end of the range, punishable by a maximum term of 5 years’ imprisonment, a sentence of 3 years on a guilty plea was well open.” [32]

*Ground 2*: While at the lower end of the scale for attempting to pervert the course of justice, any attempt to pervert the course of justice is serious and should be denounced. The offending occurred in the context of violence, manipulation and coercion of the victim, with “especially unpleasant features of seeking to exploit Ms Anderson’s emotional and psychological vulnerability by threatening her ability to access the ashes of her stillborn child and also threatening her dignity and right to privacy with the exposure of intimate images.” [36]

*Ground 3*: The applicant’s submission that accumulation of 12 months of the charge 8 sentence on the balance of the sentences failed to accord with the principles of totality and was therefore manifestly excessive was dismissed:

“Charge 8 involved repeated attempts by the applicant to conceal his wrongdoing over the previous 18 months, by means of emotional and physical threats directed at Ms Anderson. It was distinct offending that called for significant additional punishment.” [40]