

***Nicholson (a Pseudonym) v The Queen* [2019] VSCA 177 (14 August 2019) – Victorian Court of Appeal**

‘Appeal’ – ‘Damaging property’ – ‘Intervention order’ – ‘Physical violence and harm’ – ‘Sexual and reproductive abuse’ – ‘Social abuse’

Charges: 1 x stalking; 1 x damage property; 1 x intentionally causing injury; 1 x sexual assault; 1 x commit indictable offence on bail; 3 x contravention of Family Violence Intervention Order (FVIO)

Case type: Appeal against sentence

Facts: The appellant and victim were in a relationship for about 3 years, and had married. They separated in 2016 due to infidelity and domestic violence issues. The charges to which the appellant pleaded guilty were contained in 2 separate indictments. 2 summary charges were brought against him. The appellant was subject to a Final FVIO in 2016 which he breached by attending the victim’s address, damaging her car, and coming within 5 metres of her on two occasions. He also stalked the victim by contacting her in breach of the Intervention Order ([9]-[17]), damaged her car ([21]), pinned her to the ground, and choked and sexually assaulted her by kissing her on the lips ([25]-[26]). The appellant also wrote the victim letters and emails over a period of several months that were threatening in nature. At the time of committing the offences, the appellant was on bail for other matters ([29]). The victim was injured as a result of the attack ([30]).

The sentencing judge concluded that the offending was serious, ‘protracted, violent and terrifying’, and sentenced the appellant to 6 years’ imprisonment with a non-parole period of 4 years.

Issue: The issue for the Court was whether the sentence and orders for cumulation were manifestly excessive, given the mitigating factors of the applicant’s health issues and the characterisation of offences.

Held: The Court dismissed the appeal as the total effective sentence imposed by the sentencing judge was not manifestly excessive and did not fail to adequately reflect the principle of totality ([75]-[81]). The offences were committed over a period of many months within the context of family violence. The damage caused to the victim's property was found to be significant, planned and executed to cause harm ([56]). At [62], the Court noted that the sentencing judge correctly emphasised the seriousness of the offence of intentionally causing injury. The victim was frightened and threatened with words, such as 'You are going to get it' and 'Just die' ([61]). Further, the context of the sexual assault was considered to be 'significant and inextricable', as it occurred during a 'frightening physical attack', and was motivated by hatred and contempt ([66]). As for the 2 charges of contravention of the FVIO on the separate indictment, the Court did not consider the individual sentences to be manifestly excessive and that despite the applicant having no ability to carry out the threat as he was in custody, the fact that they contained death threats and were sent by someone who had previously employed threats of death made it very serious offending ([69]-[74]). As each offence was committed over an extended period of time, directed at the one person within the context of family violence, and escalated and continued even in custody, the overall criminality meant that the orders for cumulation was not manifestly excessive ([79]-[80]).