

## ***Degney v The Queen* [2019] VSCA 183 (19 August 2019) – Victorian Court of Appeal**

‘Appeal’ – ‘Family violence’ – ‘Guilty plea’ – ‘Physical violence and harm’

Case type: Appeal against sentence

Facts: The applicant sought leave to appeal against the sentence imposed for the offence of attempted aggravated burglary (3 years’ and 6 months’ imprisonment) on the ground that it was manifestly excessive. The applicant and victim lived together at the time of the offending, and were in a relationship ‘on and off’ for around 6 years.

Issue: The issue for the Court was whether the sentence was manifestly excessive, having regard to the objective gravity of the offending, the applicant’s limited criminal history and youth, the early plea of guilty and current sentencing practices.

Held: The applicant submitted that his criminal history was ‘limited and relatively minor’ ([32]). He had previously been sentenced, without conviction, to a community correction order (‘CCO’) for offences, including a charge of unlawful assault, charges of possession and use of cannabis and descending onto a railway track ([26]). He did not complete the CCO and was subsequently fined ([27]). The applicant contended that the offending was not towards the ‘serious end of the spectrum’ as it was brief, was not committed in company, and there was limited evidence of planning. He argued that there was only an intention to assault, not an intention to inflict actual physical harm ([31]).

The Court held that the seriousness of the offending was increased by factors, such as the fact that it involved ‘an attempted forced intrusion into a residence’ during the night, while possessing a ‘menacing weapon ... with an intention to assault a terrified and vulnerable domestic partner’ by creating fear ([45]). His efforts to enter the premises were persistent and threatening ([46]), and his conduct could not be described as brief or short-lived as had been submitted by the applicant ([48]). His conduct was viewed within the context of his earlier abusive behaviour towards the victim ([47]). The absence of an intention to physically harm the victim and of a history of family violence was found not to diminish the inherent gravity of the offending ([49], [53]). Significantly, the offending was committed in circumstances of family violence, which aggravated the offending ([50]). His conduct was motivated by a sense of entitlement, which reflected on his moral culpability and exemplified ‘the very worst of male attitudes towards women’ ([51]). As a result, general deterrence was an important sentencing purpose ([52]).

Mitigating factors included the applicant's early guilty plea, relative youth, limited prior history and remorse ([62]); however, when balanced against the objective gravity of the offending, these factors did not persuade the Court that the sentence was wholly outside the range of sentences reasonably available to the sentencing judge ([62]). The Court also noted the dearth of sentencing decisions involving attempted aggravated burglary ([58-59]). Nevertheless, the Court dismissed the appeal against the sentence.