

***Smith v The Queen* [2010] VSCA 192 (29 July 2010) – Victorian Court of Appeal**

‘Attempting to pervert the course of justice’ – ‘Deterrence’ – ‘Need to condemn family violence’ – ‘People affected by substance misuse’ – ‘Physical violence and harm’ – ‘Recklessly causing serious injury’ – ‘Relevance of victim's wishes’ – ‘Sentencing’ – ‘Victim contribution’

Charge/s: Recklessly causing serious injury, attempting to pervert the course of justice.

Appeal Type: Appeal against sentence.

Facts: The male applicant and female complainant were in a relationship. They were arguing and the applicant started punching and striking the complainant. The applicant was sentenced to three years and three months imprisonment with a non-parole period of two years and three months.

Issue/s:

1. The sentencing judge erred in failing to have any regard or sufficient regard to the attitude of the victim.
2. The sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. There was an assertion from counsel for the applicant that the complainant did not want these charges to be pursued (but no evidence from the complainant to substantiate these assertions). Beach AJA held that the sentencing judge was not bound to give any weight to the unsupported assertions made about the complainant's attitude to the prosecution. His Honour referred to Neave JA in *R v Hester* at [27] and held that, ‘*even in cases where there is evidence of forgiveness of the victim of domestic violence, this evidence should be treated with extreme caution*’ (See [8]).

Further, notwithstanding the applicant's attempts to deal with his drug and violence problems since being remanded in custody, the sentence imposed was well open and could not be said to be manifestly excessive. The sentencing judge properly took into account the personal circumstances of the appellant, the appellant's bad criminal record, principles of general deterrence, specific deterrence and denunciation. As per Beach AJA, ‘*this Court has said on many occasions that domestic violence will not be tolerated and that general deterrence is a very important sentencing principle in the sentencing disposition which must be, and must be seen to be, condemned by the courts*’. In the circumstances, the sentence could not be said to be manifestly excessive (See [11]).