

***Kane v R* [2010] VSCA 213 (23 August 2010) – Victorian Court of Appeal**

‘Assault’ – ‘Breach of intervention order’ – ‘Criminal damage’ – ‘Damaging property’ – ‘Intentionally causing serious injury’ – ‘Physical violence and harm’ – ‘Protection order’ – ‘Sentencing’ – ‘Specific deterrence’

Charge/s: Intentionally causing serious injury, intentionally causing injury, common assault, criminal damage, breach of an intervention order.

Appeal Type: Appeal against sentence.

Facts: The offending was spread over two indictments. The male applicant and Rachel Delaney were in a de facto relationship. She was married to, but separated from, Daniel Smyth. During the applicant’s relationship with Ms Delaney, there were repeated incidents of tension and conflict between him and Mr Smyth. After Ms Delaney informed the applicant that their relationship was over, he broke into her house and attacked Mr Smyth (who was also present). He bit off a large part of Mr Smyth’s nose and held Ms Delaney by the throat. The applicant was sentenced to eight years imprisonment.

Issue/s: The sentence was manifestly excessive.

Decision and Reasoning: The appeal was allowed. Nettle JA cited with approval the sentencing judge’s remarks that, *‘it is incumbent on a sentencing judge to impose condign punishment in a case like this in order to send a clear message to likeminded people that a civilised society does not condone people using physical violence to take the law in their own hands to settle disputes and deal with domestic partners in a violent way. Her Honour also observed, correctly, that inasmuch as these attacks were cowardly, unprovoked and unexpected attacks, there was a particular need for specific deterrence’*.

However, as the Crown conceded here, the sentence was manifestly excessive (See [24]-[25]). Nettle JA further noted that, although this was not the case in which to do so, there was a need to revisit sentencing practices in relation to offences of intentionally causing injury (See [25], [29]-[30]).