

***Hardwick (a pseudonym) v The Queen* [2020] VSCA 227 (7 September 2020) – Victorian Court of Appeal**

‘Aggravated burglary’ – ‘Application for leave to appeal against sentence’ – ‘Breach of protection order’ – ‘False imprisonment’ – ‘History of domestic and family violence’ – ‘Manifestly excessive’ – ‘Separation’ – ‘Strangulation’ – ‘Technology-facilitated abuse’ – ‘Threats to kill’

Charges: False imprisonment x 1; Common assault x 1; Aggravated burglary x 1; Making threats to kill x 1.

Proceedings: Application for leave to appeal against sentence.

Facts: The applicant man, who was subject to a protection order, entered the marital home and repositioned the CCTV cameras away from the house. When his female former partner (the victim) came home, he grabbed and restrained her, putting her in a headlock, then pinning her to the ground. The applicant tried to tape the victim’s mouth with duct tape and bound her hands with cable ties before forcing her inside the house. The applicant locked the door and bound the victim’s feet with cable ties. The applicant threatened to kill her. When one of the children arrived at the house, the victim was able to escape from the house. A neighbour called the police.

Grounds: (3) Whether the sentence was manifestly excessive.

Decision and reasoning: *Leave to appeal granted for Ground 3.*

[55] Coincidentally, on the very day that this application was argued before me, this Court delivered judgment in *Hill v The Queen*. That case concerned a home invasion by a woman who had been left by her former partner. She armed herself with a knife, forced her way into the house, and stabbed both her former partner and his new girlfriend. She faced charges not only of aggravated burglary, but also two counts of intentionally causing injury. The offending seemed to have been premeditated, and was described by the judge as ‘grievance driven’ and ‘purposeful’. The total effective sentence is 6 years and 3 months, with a non‐parole period of 3 years and 6 months. In effect, the motive for the applicant’s conduct in was anger at abandonment, and animosity towards her husband’s new partner.

...

[57] It is noteworthy that the offender in *Hill* received a non-parole period which was only 6 months greater than that fixed for the applicant. That minimal disparity, of itself, raises a question in my mind as to whether he was treated in accordance with current sentencing practice. It is of some interest to note that the sentencing judge in *Hill* was the same judge who sentenced the applicant in the present matter. I recognise, of course, that this Court described the sentences imposed in *Hill* as 'moderate', as indeed they were. Be that as it may, I regard the offending in *Hill* as far more serious than that in the present case.