

***Nolan v The Queen* [2017] VSCA 240 (6 September 2017) – Victorian Court of Appeal**

‘Aggravating factor’ – ‘Causing serious injury’ – ‘Gratuitous violence’ – ‘Manifest excess’ – ‘Not manifestly excessive’ – ‘Presence of children’ – ‘Sentence’ – ‘Youth’

Charges: Recklessly causing serious injury x 1; False imprisonment x 1; Making threat to kill x 1.

Appeal type: Application for leave to appeal against sentence.

Facts: The appellant and complainant were in a de facto relationship with two children. Over one afternoon, the appellant inflicted the following actions on the complainant in the presence of the children: throwing a pot of boiling water over her; punching and kicking her; whipping her with a kettle cord; hitting her with a broom; rubbing salt and curry powder into her wounds; and threatening to kill her (see [3]-[11]). The applicant pleaded guilty and was sentenced to 8 years’ imprisonment with a non-parole period of 5 years and 6 months. The applicant had previously been refused leave to appeal against sentence, but renewed the application to the full Court.

Issues: First, whether the sentencing judge erred in not applying principles relevant to young offenders; and second, whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed.

The Court (Beach, Ferguson and Coghlan JJA) dismissed the first ground on the basis that the judge took into account the applicant’s age, but also took into account the seriousness of the offences, the fact that the offences took place in a domestic relationship and in the presence of the applicant’s and victim’s children, and the serious injuries inflicted on the victim ([30]-[31]).

The Court dismissed the second ground on the basis that the sentencing judge took into account the applicant’s disadvantaged upbringing, lack of relevant antecedents, plea of guilty and remorse, and no comparable case established that the sentence fell outside the reasonable range ([38]). The Court appeared to endorse the sentencing judge’s comments that this was an unusual case with many aggravating factors ([24]), and that the use of weapons, boiling water and salt as ‘gratuitous and sickening behaviour’ ([22]).