Hayden Samuels (a pseudonym) v The Queen **[2018] VSCA 251 (1 October 2018) – Victorian Court of Appeal**

'Cumulative sentence' – 'People from culturally and linguistically diverse backgrounds' – 'Physical violence and harm' – 'Sexual and reproductive abuse' – 'Women'

Charges: Rape x 2; make a threat to kill x 1.

Case type: Application for leave to appeal against sentence. Determined 'on the papers'.

Facts: The victim was the applicant's wife of many years. The applicant and the victim married in 1996 and have 2 children. The family emigrated from Egypt in 2009, and practise the Coptic Christian Orthodox faith. The rape offences involved penile-anal penetration, contrary to the Coptic religious faith (charges 3 and 4). The applicant also threatened to kill the victim, telling her that if she saw a counsellor he would kill her and tell everyone that she was mentally unstable and had committed suicide (charge 5). The victim suffered an anal injury as a result of the rape the subject of charge 4. The applicant was sentenced to 10 years and 6 months' imprisonment, with a non-parole period of 7 years and 9 months. For the charge of making a threat to kill, the individual sentence was 2 years, and for the two rape charges, the individual sentences were 8 years each. The applicant was also sentenced as a serious sexual offender in respect of charge 5.

Issue: The applicant sought to appeal against the sentence. One ground of appeal was that the sentences imposed on each of the individual counts, and the order for cumulation of the sentence imposed on charge 4, were excessive.

Held: Tate JA refused leave to appeal as she was not persuaded that it was reasonably arguable that the sentences imposed against the applicant went beyond a sound exercise of the sentencing discretion ([48]). The sentences imposed against the applicant in relation to the rape charges were 'very stern'. However, the offending was 'extremely serious' and, as the sentencing judge acknowledged, there has been a recent shift towards sterner sentencing for rape and other sexual offences. This has been a conscious decision of the courts to reflect the seriousness of domestic violence and sexual crimes committed against women in Victoria ([39]).

Her Honour noted the extreme seriousness of the offending and the absence of remorse. Therefore, there was a need for specific and general deterrence in the context of protecting the community from a serious sex offender in respect of charge 5 ([43]). Having regard to the facts, circumstances and available data regarding current sentencing practices, the sentence of 2 years' imprisonment in respect of charge 5 was not manifestly excessive nor was the relatively modest cumulation of 6 months ([46]). Further, the order for cumulation with respect to charge 3 was found to be necessary to reflect the fact that the 2 rape offences occurred as 'distinct and separate episodes' ([47]).