

***Mercer (a pseudonym) v The Queen* [2015] VSCA 257 (17 September 2015) – Victorian Court of Appeal**

‘Assault’ – ‘Deterrence’ – ‘False imprisonment’ – ‘Intentionally causing injury’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Serious consequences’ – ‘Threatening to inflict serious injury’

Charge/s: Assault x 5, intentionally causing injury, threatening to inflict serious injury, false imprisonment.

Appeal Type: Appeal against sentence.

Facts: The female victim was the male applicant’s domestic partner. The applicant accused the victim of concealing drugs, becoming increasingly angry and aggressive. He slapped her, punched her to the side of the face, threw her to the floor, and whipped her with a coat hanger. The applicant then accused the victim of having a relationship with another man. He banged her head against a wall, punched her and threatened to physically harm her. The victim managed to escape but only after she had been confined for several hours. The applicant was sentenced to a total effective sentence of three years and six months imprisonment, with a non-parole period of 2 years and six months.

Issue/s: One of the issues was that the sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. This was a serious example of serious offending. As per Maxwell P and Beach JA at [54]:

‘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: R v Gojanovic [2002] VSC 467, [31]; R v Robertson [2005] VSCA 190, [13]; DPP v Smeaton [2007] VSCA 256, [21]–[22]; R v Hester [2007] VSCA 298, [19]. To borrow from what this Court said recently in Filiz v The Queen, offending of this nature is too often perpetrated by men whose response to conflict with a partner is one of violent rage. Such a response is utterly unacceptable. This Court has made it clear, and will continue to make it plain, that offending of this kind will attract serious consequences’.

The sentence imposed could not be regarded as manifestly excessive. Indeed, in light of the objective seriousness of the applicant’s conduct and giving full effect to considerations of totality, the sentence imposed by the judge was entirely appropriate (See [55]).