

***DPP v Smith* [2019] VSCA 266 (21 November 2019) – Victorian Court of Appeal**

‘Intervention order’ – ‘People affected by substance misuse’ – ‘People with disability and impairment’ – ‘Physical violence and harm’ – ‘Sexual and reproductive abuse’

Charges: 3 x causing injury intentionally; 1 x false imprisonment; 1 x rape; 1 x make a threat to kill; 2 x contravention of Final Family Violence Intervention Order (FVIO)

Case type: Appeal against sentence.

Facts: The offending involved intentionally causing physical injury, threatening to kill, false imprisonment, rape and breaching FVIOs. The respondent and complainant were in an intermittent de facto relationship for a few years prior to the offending. The respondent was sentenced to 7 years and 6 months’ imprisonment with a non-parole period of 5 years.

Issue: The appellant appealed against the sentence on the grounds that it was manifestly inadequate, and that the learned sentencing judge failed to:

- > Properly consider the objective gravity of the offending;
- > Give sufficient weight to the sentencing principles of just punishment, denunciation, general deterrence, specific deterrence and community protection;
- > Give sufficient weight to the maximum penalties for the offences; and
- > Give sufficient weight to the impact of the offending on the victim.

Held: Manifest inadequacy is difficult to establish ([28]). Nevertheless, the respondent was re-sentenced to 10 years and 6 months' imprisonment with a non-parole period of 8 years. Notwithstanding the factors relied upon in mitigation ([21]), several of the individual sentences imposed and the orders for cumulation were found to be inadequate, and therefore produced a total effective sentence that was below the range of sentences available to the sentencing judge so as to reveal an error of principle ([28]). Personal factors included: history of drug and alcohol abuse; criminal history which included a number of dishonesty and drug matters, assault and robbery, intentionally and recklessly causing injury, and failure to comply with court orders; a disadvantaged and dysfunctional upbringing; and low cognitive functioning. However, in the Court's view, there was a need for both specific and general deterrence, given the respondent's long history of violence, especially towards the complainant ([34]-[35]). The offending in question was 'brutish, cowardly...and calculated to humiliate and degrade a powerless, diminutive woman' ([32]). The Court also noted that 'people considering similar brutal, degrading abuse of a domestic partner must understand that the courts have a duty to protect vulnerable members of [the] community and will not hesitate to impose stern punishment upon wrongdoers' ([35]).