

***Marocchini v The Queen* [2015] VSCA 29 (25 February 2015) – Victorian Court of Appeal**

‘Alternative sentencing orders’ – ‘Assault police’ – ‘Community correction order’ – ‘Criminal damage’ – ‘Damaging property’ – ‘Following, harassing, monitoring’ – ‘Physical violence and harm’ – ‘Reckless conduct endangering serious injury’ – ‘Recklessly causing serious injury’ – ‘Sentencing’ – ‘Threat to kill’

Charge/s: Criminal damage x 2, reckless conduct endangering serious injury, recklessly causing serious injury, threat to kill, assaulting police, various summary offences.

Appeal Type: Appeal against sentence.

Facts: The applicant and one of the victims were married. The applicant suspected his wife was having an affair with their neighbour. Accordingly, he placed a tracking device on his wife’s car, located her, drove dangerously, threatened to kill her and damaged her vehicle. The total effective sentence was 3 years and 3 months, with a non-parole period of 2 years.

Issue/s: The sentence was manifestly excessive.

Decision and Reasoning: The appeal was allowed. The Court considered whether the imposition of a ‘Community Correction Order’ (CCO) would have been more appropriate than imprisonment. Beach JA quoted extensively from *Boulton v The Queen*, an important guideline judgment about CCO’s. In *Boulton*, it was noted that imprisonment should always be the last resort, and that a CCO is an alternative punitive option, even for ‘relatively serious offences which might previously have attracted a term of imprisonment’ (See at [23] – [26]).

While Beach JA acknowledged that this was a serious offence, with a number of aggravating features, a CCO should have been ordered here. The offending occurred over a relatively short time, the appellant was married with four children, had no criminal history and he had the support of his wife who was the principal victim. The sentence was set aside and substituted for a sentence of four months’ imprisonment and a CCO of three years’ duration with conditions including 300 hours of unpaid community work (See at [30]). This case confirms that where such mitigating factors exist (particularly a lack of criminal history), the sentencing objectives can be achieved by combining a short term of imprisonment with a CCO. However, Beach JA noted that this would not have applied if the appellant had a criminal history.

The relevant passage in *Boulton* that his Honour referred to is – ‘*The availability of the combination sentence option adds to the flexibility of the CCO regime. It means that, even in cases of objectively grave criminal conduct, the court may conclude that all of the purposes of the sentence can be served by a short term of imprisonment coupled with a CCO of lengthy duration, with conditions tailored to the offender’s circumstances and the causes of the offending.*’.