

## ***DPP v Barnes & Barnes* [2015] VSCA 293 (12 November 2015) – Victorian Court of Appeal**

‘Aggravated burglary’ – ‘Denunciation’ – ‘General deterrence’ – ‘Intentionally cause serious injury’ – ‘Just punishment’ – ‘Physical violence and harm’ – ‘Protection of the community’ – ‘Protection order’ – ‘Sentencing’ – ‘Specific deterrence’ – ‘Women’

Charge/s: Aggravated burglary, intentionally cause serious injury x 2.

Appeal Type: Crown appeal against sentence.

Facts: Trevor Barnes (‘the first respondent’) and his younger brother (‘the second respondent’) entered into the premises of the first respondent’s estranged wife, without her consent. Three days prior to the home invasion, the first respondent had been released from prison for offences including assaulting his wife and multiple breaches of an intervention order she had in place against him. The first respondent saw his wife and her new partner in the shower together and smashed the door of the shower. He struck his wife’s new partner and his wife with a jemmy bar before pulling out a Stanley knife. He only stopped when his wife said she loved him. The first respondent was sentenced to six years imprisonment with a non-parole period of three years.

Issue/s: One of the issues was that the sentence imposed on the first respondent was manifestly inadequate.

Decision and Reasoning: The appeal was allowed. First, in relation to the charge of aggravated burglary, Redlich JA noted that this was a very serious offence of ‘intimate relationship aggravated burglary’. The first respondent entered into the house, uninvited and in company, carrying a jemmy bar, with the intention to assault his estranged wife, whom he knew was frightened of him because of his past instances of violence. He had just been released from prison and committed these offences in breach of an intervention order and a partly suspended sentence. As Redlich JA stated at [48]-[49]:

*‘General deterrence, denunciation and just punishment are important purposes in sentencing for such an offence ... Specific deterrence and protection of the community are also important in this case, given that Trevor had not long since been released from prison for offences that included assaulting Ms Bethune and breaching an intervention order in her favour’.*

However, the sentence here failed to adequately reflect these purposes.

Second, in relation to the charges of intentionally causing serious injury, in sentencing the first respondent for these offences, the sentencing judge stated: (See [68])

*'I make it plain that I consider that you are the main offender in this criminal enterprise and the whole appalling saga was dictated by your immaturity and inability to control your anger in the context of your possessive and controlling behaviour of Ms Bethune, whom you had subjected to domestic violence on earlier occasions. In sentencing you, the court must denounce your conduct, give emphasis to general deterrence, and impose just punishment. A strong message needs to be sent to males in the community who are inclined to be violent towards their female partners. You do not own them. You have no right ... menacingly [to] control them. If you lay a hand on them in anger, the law will not spare you punishment. Men who are bullies towards women usually have some psychological inadequacy. They need to look long and hard at themselves to try to understand why they are inclined to behave with anger and brutality, and seek professional help to overcome such inclinations.*

*In your case, emphasis must also be placed upon specific deterrence because of your prior history of violence towards Ms Bethune. As I have indicated, your history of offending whilst on a suspended sentence, and breaching an intervention order, do not inspire optimism'.*

Redlich JA noted that while the sentencing judge was clearly alive to the need to place considerable weight on the need for general deterrence, denunciation, just punishment, specific deterrence and protection of the community, the sentences imposed did not adequately reflect these purposes (See [69]).