

***Byrnes v The Queen* [2015] VSCA 341 (10 December 2015) – Victorian Court of Appeal**

‘Contravening a family violence intervention order’ – ‘Denunciation’ – ‘Deterrence’ – ‘False imprisonment’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Pregnant women’ – ‘Sexual and reproductive abuse’ – ‘Threat to kill’

Charge/s: False imprisonment, threat to kill, contravening a family violence intervention order, assault with a weapon, assault police, resist police.

Appeal Type: Appeal against sentence.

Facts: The male applicant and the female victim were in a relationship and the victim was 17 weeks pregnant with their child. The applicant wanted the victim to terminate the pregnancy and had made numerous threats against the victim and the baby. A family violence intervention order was made. On the day of offence, the applicant locked the victim inside the house, held a knife against her, and threatened to kill her if she screamed or called the police. He then tried to force the victim into the bath, saying that he was going to abort the baby. He continued to threaten the victim and the baby until he became tearful. The applicant was sentenced to a total effective sentence of three years and nine months imprisonment with a non-parole period of two years and six months.

Issue/s: The sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. In light of the applicant’s mitigating circumstances (his mental condition, his lack of prior convictions and his steps towards rehabilitation), the sentences imposed were high. However, the circumstances of the offence were particularly serious and required the imposition of a sentence that was sufficient to reflect the gravity of offending and to serve the purposes of sentencing including general deterrence and denunciation (See [24]). In particular, at [22]-[23], Kaye JA held:

‘The applicant’s offending had a number of very serious characteristics. As the respondent has pointed out, it was premeditated, and the applicant had clearly prepared for it. The victim was vulnerable. She was carrying the applicant’s baby. The applicant took advantage of his greater strength, and the fact that he had a weapon, to overwhelm her. The threat to abort the baby was, as the judge correctly said, a ‘most ugly’ aspect of the false imprisonment. The whole experience, to which the applicant subjected her, must have been extraordinarily terrifying. She was justifiably in grave fear for her own life and that of her baby. While the imprisonment did not extend for hours or days, it lasted for over one hour, during the whole of which the applicant terrorised his victim.

In those circumstances, the offending by the applicant, comprising charge 1, called for a stern sentence. In such a case, involving wanton domestic violence, general deterrence, specific deterrence, and denunciation were important considerations: Filiz v The Queen [2014] VSCA 212 at [21] and Mercer v The Queen [2015] VSCA 257 at [54]. While the judge accepted that the applicant's psychological condition moderated the weight to be given to those considerations, nevertheless, they rightly remained important factors in the determination of the applicant's sentence: R v Yaldiz [1998] 2 VR 376, 381'.