

***Forbes (a Pseudonym) v The Queen* [2018] VSCA 341 (18 December 2018) – Victorian Court of Appeal**

‘Factors affecting risk’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Sexual and reproductive abuse’

Charges: Multiple counts of assault and rape.

Appeal type: Appeal against sentence.

Facts: The applicant was charged with 12 counts of assault and rape. The first five charges involved intentionally causing injury and rape against his former domestic partner. The remaining seven charges concerned offences of assault, rape, making a threat to kill and intentionally causing injury against the same domestic partner, however, the parties had separated at the time these particular offences were alleged to have been committed. The applicant pleaded not guilty to the offences. The sentencing judge imposed a sentence of 10 years 10 months’ imprisonment, with a non-parole period of seven years and three months.

Issues: The applicant sought leave to appeal because the sentence imposed was manifestly excessive in that:

- > The individual sentence imposed for one of the counts of rape (count 11) was excessive; and
- > The sentencing judge incorrectly characterised each offence as a serious example of that kind of offence; and
- > The sentencing judge gave insufficient weight to the applicant’s prospects of rehabilitation.

Decision and reasoning: The Court emphasised that the ground of manifest excess will only succeed if it can be proven that the sentence imposed fell wholly outside the range of sentencing options available to the sentencing judge. Their Honours considered the applicant’s limited criminal history to be relevant, but given his lack of remorse, denial of the offending and the circumstances of the offending, the sentencing judge was open to conclude that his prospects of rehabilitation were ‘guarded’ ([39]). The offending was found to be very serious, and the context of domestic violence significant ([42]). The applicant’s personal circumstances were also considered, including his previous experiences as a victim of sexual abuse, and his medical and psychological history (including brain damage and bipolar disorder). Ultimately, the Court refused the appeal as the total effective sentence imposed by the sentencing judge was not outside the range of sentencing options available to him.

The Court observed that the context of domestic violence is also very important. The Court quoted from *Pasinis* [2014] VSCA 97:

Historically perpetrators of family violence were rarely prosecuted. Even when offenders were convicted of such offences, they often received lenient sentences. Fortunately the criminal law now gives greater recognition to the devastating effects of family violence. It has also been recognised that women who are killed by their husband, boyfriend or de facto partner have frequently been assaulted by them many times previously. This makes both specific and general deterrence very important factors in sentencing men who assault their partner.

The Court noted the importance of general deterrence in this context.