

***Packard (a pseudonym) v The Queen* [2021] VSCA 56 (15 March 2021) – Victorian Court of Appeal**

‘Application for leave to appeal against sentence’ – ‘Forgiveness of victim’ – ‘Intentionally cause serious injury’ – ‘Lack of history of domestic violence’ – ‘Listening to Victims’ – ‘Mercy’ – ‘Separation’ – ‘Weapons and threats to kill’

Charges: Intentionally causing serious injury x 1.

Proceedings: Application for leave to appeal against sentence.

Facts: The male applicant pleaded guilty to stabbing his wife 5 times. There was no prior history of domestic and family violence. He was sentenced to a total effective sentence of 7 years’ imprisonment, with a non-parole period of 4 years and 6 months.

Grounds of appeal:

1. The sentencing judge erred in failing to take into account the victim’s full recovery.
2. The sentencing judge erred in treating the victim’s forgiveness with extreme caution, and having regard to it only insofar as it boded well for the applicant’s rehabilitation, rather than also taking it into account in assessing the impact upon the victim and in considering the application of the principle of mercy. In particular:
 - (a) Her Honour took into account irrelevant considerations namely forgiveness of a victim is often attributable to a pattern of behaviour on the part of perpetrators of family violence and her family had “persuaded” her to forgive the applicant.
 - (b) Her Honour failed to take into account relevant considerations which indicated that the victim’s forgiveness was genuine/informed.
 - (c) Her Honour’s conclusion was not reasonable open.
 - (d) The applicant was denied procedural fairness.
3. The sentence was manifestly excessive in light of all the relevant matters, including that the applicant called emergency services, his confessions, his very early guilty plea, his lack of relevant prior convictions, his lack of history of violence, and the fact that he was of no risk of reoffending.

Held: Application for leave to appeal dismissed.

Ground 1: It was fortunate that the victim had made a good physical and emotional recovery but this did not negate that this was a serious example of the offence causing serious injury. The applicant’s moral culpability was also high.

Ground 2: Counsel for the applicant was plainly on notice that the judge was minded to apply the principles regarding victims' forgiveness stated by Neave JA in *R v Hester* at [27]. It was not open to argue he was denied procedural fairness.

It could not be reasonably maintained that the judge erred in failing to extend "mercy" to the applicant. This was a serious instance of intentionally causing serious injury, noting "[i]t would be most difficult to comprehend how mercy can be properly extended in a case in which a man has overpowered his wife in her home, and proceeded to violently stab her five times with a knife, thereby penetrating her vital organs and putting her life at risk" at [45].

While it seemed the sentencing judge incorrectly inferred that the victim had been persuaded by male family members to express forgiveness (with reference to *Hester*), that observation "could not materially have affected the question whether her Honour should have extended mercy to the applicant." Further, the judge correctly took into account the relevance of the victim's forgiveness to motivating the applicant's rehabilitation.

Ground 3: Without the compelling mitigating circumstances present in this case, the sentence would have been properly characterised as lenient. Accordingly, the sentence appropriately reflected the mitigating factors referred to by the applicant. In light of the gravity of the offending, and the importance of general deterrence and denunciation, the sentence could not be said to be manifestly excessive: [53]-[57].