

***Hardwick (a pseudonym) v The Queen* [2021] VSCA 67 (19 March 2021) – Victorian Court of Appeal**

‘Aggravated burglary’ – ‘Appeal against sentence’ – ‘Common assault’ – ‘False imprisonment’ – ‘Manifest excess’ – ‘Protection order’ – ‘Separation’ – ‘Threat to kill’

Charges: False imprisonment x 1; Common assault x 1; Aggravated burglary x 1; Making a threat to kill x 1.

Proceedings: Appeal against sentence.

Facts: The appellant man pleaded guilty to offences committed against his wife following their separation. The appellant waited until she returned home, restrained her (including using cable ties), prevented her from escaping, and threatened to kill her. The wife managed to escape. The appellant pleaded guilty and was sentenced to a total effective sentence of 4 years and 6 months’ imprisonment, with a 3 year non-parole period. He had also breached an order protecting his wife on numerous previous occasions.

Grounds of appeal: The sentence was manifestly excessive.

Held: Appeal was dismissed but noting that the sentence was “very stern” and “at the uppermost extremity of the appropriate range.”

The sentence for the aggravated burglary charge was not manifestly excessive. Previous decisions reinforced “the seriousness with which the courts view aggravated burglaries” and identify typical matters that might aggravate a particular instance of the offence. While the offending was not “an act of extreme domestic violence,” as characterised by the sentencing judge, overall the offending was serious. The sentencing judge was entitled to have significant reservations regarding the appellant’s remorse and insight which underpinned the importance of specific deterrence. General deterrence was also important in the context of family violence.

The sentences for false imprisonment and threat to kill were also not manifestly excessive. In particular, “[t]he false imprisonment extended over a period of time and involved physical restraint. The imprisonment in her own home, in the context of family violence would have been extremely distressing to the victim. It deserves powerful denunciation. Equally, the threat to kill was serious. The threat was made in circumstances where the appellant told his victim that he was concealing things ‘that you don’t want to see’. The whole incident did not have an obvious end point and the appellant’s behaviour would have instilled a substantial sense of dread and fear.” The degree of cumulation was also not manifestly excessive.