

***Saddler v Pavicic* [2011] ACTSC 199 (9 December 2011) – Australian Capital Territory Supreme Court**

‘Assault’ – ‘Assault occasioning actual bodily harm’ – ‘Deterrence’ – ‘Family members’ – ‘Manifestly inadequate’ – ‘Older people’ – ‘Parent/s’ – ‘Physical violence and harm’

Charge/s: Assault occasioning actual bodily harm, assault.

Appeal type: Crown appeal against sentence.

Facts: During the course of an argument, the 31 year old respondent and his 60 year old mother (the first complainant) began pushing and shoving each other. This culminated in the respondent grabbing the complainant by the neck and pushing her, causing her to fall and fracture her wrist (assault occasioning actual bodily harm). Later that afternoon, the first complainant was visited by the male second complainant and his 4 children. The second complainant heard a revving noise and saw the respondent holding a chainsaw outside the window. The respondent said, ‘You fucking Australian cunt, come out here, I am going to cut you, like this’, and then tried to enter the backdoor. When he failed, the respondent picked up a fish gaff and swung it above his head (assault). The magistrate recorded a conviction and fined the respondent \$1,000 for assault occasioning bodily harm and \$1,500 for assault.

Issue/s: One of the grounds of appeal was that the sentences imposed were manifestly inadequate.

Decision and Reasoning: The appeal was allowed. The sentence for the assault occasioning actual bodily harm was manifestly inadequate. The respondent was not entitled to leniency in sentencing on the basis of his prior criminal history or on the basis of his plea. The sentence imposed gave little, if any, weight to the requirements of specific and general deterrence, nor did it reflect the objective seriousness of the offence, even taking into account the provocation from the complainant. The appellant was re-sentenced to a suspended sentence of 7 months imprisonment.

In reaching this conclusion, Burns J noted that this was clearly a domestic violence offence. He noted that, ‘It is now well settled that offences of domestic violence must be treated seriously, and frequently display aggravating features not present in offences occurring outside a domestic relationship. The only reason the respondent was in a position to commit the offence on his mother was because of that relationship. As such, the offence involved a serious breach of the trust reposed in the respondent as a son by his mother. Additionally, the age of the complainant was an aggravating circumstance attending the commission of the offence’ at [12].

The sentence imposed by the magistrate in relation to the assault was also manifestly inadequate.