

***Beniamini v Storman* [2014] ACTSC 2 (22 January 2014) – Australian Capital Territory Supreme Court**

‘Assault’ – ‘Damaging property’ – ‘Exposing children’ – ‘Intentionally causing damage to property’ – ‘People affected by substance misuse’ – ‘Physical violence and harm’ – ‘Rehabilitation’ – ‘Sentencing’

Charge/s: Intentionally causing damage to property x 2, trespassing without reasonable excuse, assault, minor theft.

Appeal type: Appeal against sentence.

Facts: The appellant was in a relationship with a young woman, the complainant, and they had two children together. The relationship was characterised by ongoing conflict, caused largely by the appellant’s ongoing abuse of alcohol, and subsequently the relationship broke down. Later, the appellant went to the complainant’s house to see the children but she refused to let him in. The appellant damaged the front security door and shouted threats. He was arrested and granted bail for this offence. However, before the proceedings could be resolved, the appellant again went to the complainant’s property, and broke open the front door. The appellant began to strangle the complainant (assault). The complainant’s daughter rang the complainant’s mother who arrived and manage to calm the appellant down. The police arrived and the appellant ran off. On another subsequent occasion, the appellant was charged with minor theft for leaving a petrol station without paying.

The appellant pleaded guilty and was sentenced in the Magistrates Court to: intentionally causing damage to property — fine of \$1,500; intentionally causing damage to property — 3 months imprisonment to commence on 1 August 2013; trespassing without reasonable excuse — fine of \$500; assault — 17 months imprisonment to commence on 1 September 2013; minor theft — fine of \$250. A non-parole period of 12 months was set on the total period of 18 months imprisonment.

Issue/s: One of the grounds of appeal was that the terms of imprisonment imposed, including the non-parole period, were manifestly excessive.

Decision and Reasoning: The sentence for the assault was manifestly excessive, the appeal allowed and the appellant re-sentenced (see *R v Beniamini; Beniamini v Storman* [2014] ACTSC 40 (22 January 2014)). The offence of assault was serious: it was committed late at night in the complainant’s home; it was an offence in the context of family violence; and the offence was protracted. It was more serious by the fact that the appellant was on conditional liberty at the time, the offence was committed in the presence of children, and the appellant had prior convictions for personal violence (but not family violence).

However, despite the seriousness of the assault, the sentence was manifestly excessive because the magistrate started her calculation of sentence on the basis that this was almost the worst category of the offence (See [119]). Since the time of offences, the appellant had made no further inappropriate contact with the complainant, had managed to resolve issues of access to the children, and had stopped drinking. This was also his first offence of violence in the family context. It was also relevant that the denial of access to his children at the time was arbitrary and not under any court order. He was remorseful and showed insight into his actions (See [94]-[104]).