

***Pasa v Bell* [2014] ACTSC 303 (30 October 2014) – Australian Capital Territory Supreme Court**

‘Assault’ – ‘At the complainant’s home’ – ‘Exposing children’ – ‘General and personal deterrence’ – ‘Physical violence and harm’ – ‘Sentencing’

Charge/s: Assault.

Appeal type: Appeal against conviction and sentence.

Facts: The appellant pleaded guilty to an offence that he assaulted his former fiance and de facto partner of 2 years (the complainant). The offence occurred about 1 month after the appellant and the complainant had separated in the presence of the complainant, a friend, and the appellant’s young son. The appellant and the complainant argued and the complainant asked him to leave. The garage door hit the appellant on the head as he left and he turned around the pushed the complainant. She fell backwards into the car. The appellant spoke in a threatening manner to the complainant. He pushed her again, kicked her car twice, and left.

Issue/s: One of the grounds of appeal was that the primary judge erred in his assessment of what constituted an aggravating feature of the offence.

Decision and Reasoning: The appeal against conviction and appeal against sentence was dismissed. In relation to the appeal against conviction, the appellant submitted that the mere fact the offence was committed at the home of the victim is not enough to aggravate the offence; there must be some level of intrusion. Murrell CJ noted that a sentencing court must consider all relevant objective and subjective matters. She stated,

*‘When considering the sentencing purposes set out in s 7 of the Sentencing Act, including general and personal deterrence, a sentencing court is entitled to consider the fact that an offence involved domestic violence, and that the violence has occurred at the victim’s home. An offence involving domestic violence is one that involves abuse of a partner, former partner or other family member (using the term “family” in the broadest sense). Frequently, such offences occur in the home, where the inhibitions of an offender may be lowered, the impact on the victim may be heightened (as she or he is made to feel that a formerly safe place has been violated) and the occurrence of the offence is more readily concealed. Further, where a domestic violence offence occurs in the victim’s home, it is often associated with secondary abuse to other family members’ (See [16]; See also *R v Bell* [2005] ACTSC 123 [30]-[31]).*

Here, the primary judge did not approach the matter on the basis that the 'mere fact' that the incident took place at the complainant's home was an aggravating feature. He considered the location of the offence in the context of other relevant circumstances namely that it occurred at a place where the complainant was entitled to feel safe, it occurred in the presence of the appellant's son, and the appellant refused to leave.