

***Goundar v Goddard* [2010] ACTSC 56 (29 June 2010) – Australian Capital Territory Supreme Court**

‘Anger management programs’ – ‘Appeal against sentence’ – ‘Assault’ – ‘Physical violence and harm’ – ‘Probation’ – ‘Purpose of sentencing’ – ‘Rehabilitation’

Charge/s: Assault.

Appeal type: Appeal against sentence.

Facts: The male appellant and his wife, the complainant, were involved in a lengthy argument regarding the conduct of the complainant’s daughter. The appellant swore at the complainant and said, ‘I’m going to kill you’. He then pushed the complainant on her forehead, causing her to fall backwards into her chair. The complainant went to her daughter’s bedroom and was followed by the appellant. The argument continued and at one point the appellant came so close he caused the complainant to stumble backwards onto the bed. The appellant pleaded guilty to assault. Counsel for the appellant sought a non-conviction sentence and the prosecution made no opposing submissions. The magistrate imposed a good behaviour order which required the appellant to subject to probation for 18 months and required the appellant to attend counselling on anger management and inter-personal relationships.

Issue/s: The condition of the good behaviour order requiring the appellant to be subject to probation for 18 months was manifestly excessive.

Decision and Reasoning: The appeal was allowed and the period of supervision set aside. This was an offence at the lower end of the scale of seriousness for such offences, notwithstanding that this was a family violence offence. It was committed by a person with no criminal history. Further, a substantial number of very positive references were submitted attesting to the appellant’s good character (See [44]-[47]).

The respondent submitted that weight had to be given to general and specific deterrence because this was a family violence offence. Refshauge J accepted this but noted that ‘supervision on probation is not ordinarily seen as part of the deterrent component of sentencing’. It is generally a rehabilitative part of sentencing. Here, unless actual supervision was required for a rehabilitative purpose, i.e. to ensure the appellant attended counselling, it was not appropriate to make a probation condition. There was no suggestion on the facts that the appellant would benefit from such guidance (See [48]-[59]).