

***R v Taheri* [2017] SASCFC 115 (8 September 2017) – Supreme Court of South Australia (Full Court)**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘Character reference’ – ‘Imprisonment’ – ‘Physical violence and harm’ – ‘Risk of deportation’ – ‘Systems abuse’ – ‘Women’ – ‘Written reference’

Charges: Aggravated serious criminal trespass in a place of residence x 1; Aggravated threatening harm x 2; Aggravated threatening life x 1.

Appeal type: Appeal against sentence.

Facts: The appellant and complainant were married but separated. An intervention order was in place. The appellant broke into the complainant’s house while the complainant and her sister were inside. He cut through a flyscreen window with a knife and put a rope around the complainant’s throat. The appellant threatened to kill the complainant and hurt her sister if she did not withdraw the complaint she made to the police about him ([10]). The appellant came to Australia as a refugee and was living on a permanent residence visa.

The appellant was sentenced to a head sentence of five years’ imprisonment with a non-parole period of 2 years ([5]). The judge ordered partial concurrency to the extent of 12 months ([34]).

Issues: The appellant appealed on 4 grounds, that the judge erred in:

1. failing to make a finding as to the risk the appellant posed to community safety in declining to make a home detention order under s 33BB *Criminal Law (Sentencing) Act 1998 (SA)* ([15]);
2. the approach in relation to partial concurrency;
3. her treatment of a written reference provided on behalf of the appellant;
4. failing to consider the risk of deportation in imposing a sentence of more than 12 months ([7]).

Decision and Reasoning: The appeal was dismissed.

On the first ground, Nicholson J held that s 33BB *Criminal Law (Sentencing) Act 1998 (SA)* does not require a sentencing judge to make a specific finding as to the risk that an offender poses to the community. Nicholson J held that declining to order home detention was within the judge’s discretion ([31]).

On the second ground, Nicholson J held that it was open to the judge to discount the written reference as to character. The reference did not consider the appellant's character apart from how he presented himself in a social setting ([20]-[22]).

On the third ground, Nicholson J held that concurrency between the sentences was within the judge's discretion ([36])

On the fourth ground, Nicholson J held that on the assumption that the risk of deportation was relevant, the sentencing judge considered those matters ([46]).