

***R v Koch* [2015] SASCFC 31 (27 March 2015) – South Australia Supreme Court (Full Court)**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘Causing serious harm with intent’ – ‘General deterrence’ – ‘Impact of offence on victim’ – ‘Physical violence and harm’ – ‘Relevance of guilty plea’ – ‘Sentencing’ – ‘Trespass’

Charge/s: Criminal trespass in a place of residence, causing serious harm with intent and using a motor vehicle without consent.

Appeal Type: Application for permission to appeal against sentence.

Facts: The victim of the offending was the mother of the respondent’s former partner. After entering her house by the back door, he questioned her about his relationship with her daughter. He became enraged, at which point he restrained her, pushed her to the floor and punched her multiple times to the side of the head. He provided no medical assistance to her and left her lying unconscious on the floor. The victim sustained lasting injuries as a result of the offending. The sentencing judge’s starting point was 6 years’ imprisonment. Taking into account his pleas of guilty, the respondent was sentenced to four years and six months’ imprisonment with a non-parole period of two years and three months.

Issue/s: Whether the sentence was manifestly inadequate.

Decision and Reasoning:

In granting permission and allowing the appeal, the Court noted the high maximum penalties, (life imprisonment for criminal trespass and 20 years for causing serious harm with intent) and the relatively insignificant mitigating factors. The offending was ‘particularly brutal’ (See at [35]). Parker J (Kourakis CJ and Bampton J concurring) held that the notional starting point of 6 years was manifestly inadequate and the sentence itself was not adequate to amount to general deterrence or just punishment. See in particular at [42] – *‘General deterrence is a very important consideration in sentencing for offences of violence committed in the course of domestic disputes. The sentence imposed fails to provide the level of general deterrence necessary to ensure public confidence in the enforcement of the criminal law in this fraught area.’* The Court also found that the trial judge’s 25% discount for the guilty plea was too high. The respondent ‘had no practicable option other than to plead guilty’ (see at [46]), which needed to be taken into account in determining the quantum of the discount. The total effective sentence was therefore increased to six years and eight months (applying a 20% discount for the guilty plea), with the non-parole period set at four years and two months.