

***R v Hibeljic* [2018] SASCFC 35 (11 May 2018) – South Australia Supreme Court (Full Court)**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘Emotional and psychological abuse’ – ‘Following, harassing and monitoring’ – ‘Imprisonment’ – ‘People from culturally and linguistically diverse backgrounds’ – ‘Sexual and reproductive abuse’ – ‘Women’ – ‘Young people’

Charges: Blackmail x 1; Knowingly distributing an invasive image x 1.

Appeal type: Appeal against sentence.

Facts: The appellant had been in a relationship with the victim. They were both 18 years old. He threatened to distribute a video of the victim with her breasts exposed unless she had sex with him, and in fact distributed it to three people (her friend, new boyfriend and father). He knew that her father was of Syrian background, very strict and was likely to react harshly if he became aware of the video ([10]). Upon watching the video, her father subjected her to ‘significant physical harm’ in a ‘frightening and vicious physical attack’ ([22]). The victim’s relationship with her family was significantly damaged, and she was forced to leave Adelaide and abandon her tertiary education ([24]).

The sentencing judge sentenced the appellant to 3 years and 3 months’ imprisonment with a non-parole period of 15 months.

Issues: Whether the sentence was manifestly excessive.

Decision and Reasoning: The Court of Appeal dismissed the appeal, holding that the sentence was not manifestly excessive. It was significant that both offences involved a sexually explicit video of the victim, and the appellant’s gross betrayal of trust involved in distributing it ([45]). The blackmail was a ‘particularly serious instance’ of this type of offending ([46]). The appellant was aware of the likelihood of a serious and significant reaction on the part of the victim’s father ([51]).

The appellant submitted the sentencing judge did not properly take into account his youth, lack of criminal history, general good character and likelihood of rehabilitation ([60]). However, the Court held that the sentence of imprisonment, without suspension or home detention, was reasonably imposed ([63], [68] [81]).