

***R v M, AG* [2013] SASCFC 39 (24 May 2013) – Supreme Court of South Australia (Full Court)**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘Intervention order’ – ‘Physical violence and harm’ – ‘Post-separation violence’ – ‘Sentencing’ – ‘Sexual and reproductive abuse’

Charges: Aggravated serious criminal trespass in a place of residence x 1; Rape x 5; Theft x 1.

Appeal type: Prosecution appeal against sentence.

Facts: The defendant was the victim’s (M) former partner ([1]). The defendant had been arrested and granted bail on multiple occasions for offences committed against M ([6]-[10]). The present offences occurred when the defendant attended M’s home while on bail. He pushed her into the house, leaving their baby in the car. He took a sledgehammer that M left inside her house for her own protection. He threatened to rape her with it, and then proceeded to force her to perform fellatio on him, vaginally and anally raped her, and forced the hammer of the sledgehammer into her vagina ([12]).

The defendant initially pleaded not guilty and provided an alibi notice, but after the prosecution presented him with evidence disproving the alibi notice, the defendant pleaded guilty ([15]). The defendant was sentenced to 7 years’ imprisonment with a non-parole period of 4 years. The judge declined to make an intervention order ([2]).

Issues: Whether the sentence was manifestly inadequate and whether the judge erred in failing to make an intervention order.

Decision and Reasoning: The appeal was allowed, and the sentence was almost doubled to 13 years’ imprisonment with a non-parole period of 9 years ([55]). The Court also imposed an intervention order with the sentence ([64]).

Sulan J (Vanstone and Peek JJ agreeing) held that the sentencing judge appeared to have overlooked the brutality and seriousness of the offending and placed too much weight on the appellant’s personal circumstances ([45]-[46]). His Honour said that ‘personal and general deterrence must take precedence over the personal circumstances of the defendant’ ([46]).

The offences were serious because they occurred in the victim's own home ([29]), the defendant had a criminal history that suggested a disregard for the law ([34]) and the terrifying nature of the weapon used ([41]). The pleas of guilty did not demonstrate genuine contrition, coming only after his alibi evidence had been disproved ([47]). The fact that the defendant and victim were previously in a relationship was not a mitigating factor ([42]).