

***R v Nelson* [2017] SASCFC 40 (8 May 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*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘General and specific deterrence.’ – ‘People affected by substance abuse’ – ‘Traumatic brain injury’

Charges: Causing serious harm with intent to cause serious harm x 1.

Appeal type: Prosecution appeal against sentence.

Facts: The victim and defendant were formerly in a domestic partnership. The offences occurred on one occasion. In the presence of other people at their home, the defendant: grabbed the victim and dragged her outside; began to call her names; repeatedly hit her head and kick her head and body ([6]). The victim sustained an extremely severe traumatic brain injury, and was likely to be left with long-term cognitive defects ([7]). The sentencing judge had regard to the defendant’s disadvantaged background and low level of cognitive functioning (attributed to the defendant having sniffed petrol since he was four years old) (see [10]-[20], [26]-[27]).

The defendant was sentenced to 3 years and 3 months’ imprisonment, with a non-parole period of one year and six months.

Issues: The prosecution argued that the sentence was manifestly inadequate.

Decision and Reasoning: The appeal was allowed. The Court (Parker J, with Kourakis CJ and Nicholson J agreeing) found that this was an exceptional case that required intervention by the appellate court ([36]). Parker J considered that the sentence did not give enough weight to the need for general and specific deterrence in domestic violence offences. Parker J stated (at [45]-[47]) that:

“It was necessary for the sentencing judge to take into account, as his Honour did, the defendant’s background of disadvantage and social deprivation arising from his upbringing in a traditional and remote Aboriginal community. However, the fact that ... the defendant had very recently been released after a period of imprisonment imposed for two assaults on a different female drinking companion operated to reduce the leniency that his personal circumstances might otherwise have attracted. Moreover, the attack by the defendant upon his domestic partner was particularly brutal and has had grave consequences for her ... The sentence did not give appropriate effect to the views consistently expressed by this Court concerning the need to give significant weight to considerations of specific and general deterrence when sentencing defendants who have engaged in serious domestic violence.”

The defendant was sentenced to 5 years imprisonment, with a non-parole period of 3 years.