

***R v Capaldo* [2015] SASCFC 56 (28 April 2015) – Supreme Court of South Australia (Full Court)**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘Aggravating factor’ – ‘Mitigating factors’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Possession of firearm’ – ‘Sentencing’ – ‘Where the offender is also a victim’

Charge/s: Various offences relating to the possession of a loaded, semi-automatic handgun.

Appeal Type: Appeal against sentence.

Facts: At trial, evidence was put before the judge relating to the violent behaviour of the appellant’s former partner. The appellant made a statement to police indicating that she obtained the handgun for her own protection. She pleaded guilty and was sentenced to one year and six months’ imprisonment with a non-parole period of 5 months.

Issue/s: Whether the sentence should have been suspended and whether the trial judge demonstrated pre-judgment and an appearance of bias.

Decision and Reasoning: The appeal was upheld. In a joint judgment, Gray and Sulan JJ found that the Judge impermissibly intervened in the trial process, giving rise to an appearance of bias in the eyes of a fair-minded lay observer. The judge constantly interrupted and in cross-examining the appellant, suggested that she was not willing to participate in a police interview, which was false. The Judge was also in error by not accepting the appellant’s explanation for the reasons that she possessed the firearm. The sentencing therefore proceeded on errors of fact. In resentencing, Gray and Sulan JJ acknowledged the serious nature of the offending, particularly that the gun was loaded and easily concealable. Counsel for the appellant conceded that a sentence of imprisonment was warranted. In mitigation, the appellant had no criminal history and had suffered serious abuse at the hands of her former partner, to the extent that she suffers from PTSD. As such, the head sentence was reduced to 17 months with a reduced non-parole period of 4 months and the sentence was also suspended upon the appellant entering into a good behaviour bond for 3 years. Kelly J also upheld the appeal but dissented with respect to re-sentencing and concluded that it should be remitted back to the District Court, given the disputed facts.