***R v Ritter* [2016] SASCFC 88 (16 August 2016) – Supreme Court of South Australia (Full Court)**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

'Assault causing harm' – 'Causing harm with intent' – 'Fresh evidence' – 'Manifestly excessive' – 'Physical violence and harm' – 'Rehabilitation'

Charge/s: Assault causing harm, causing harm with intent.

Appeal Type: Appeal against sentence.

Facts: The male applicant and the female victim had been in a relationship for two years. His behaviour towards her had been violent and controlling. On 19 March 2014, the applicant was yelling abuse at the victim and she became so fearful she ran into the streets. He chased her and punched her in the face. On 22 April 2014, the applicant verbally abused the victim, hit her around the head with a pillow and punched her to the left side of her mouth. The second assault caused injuries requiring surgery. As a result of the two incidents, the victim had scars on the left and right sides of her mouth. There was also evidence of a number of uncharged acts. The applicant was sentenced to a total head sentence of six years and eleven months imprisonment, with a non-parole period of five years.

Issue/s:

1. Fresh evidence, a psychologist's report and a report from an officer of the Department of Correctional Services, ought to be admitted.
2. The head sentence and the non-parole period were manifestly excessive.
3. The sentencing judge erred in not having or seeking materials on which a proper assessment could be made of the applicant's prospects for rehabilitation.

Decision and Reasoning: The appeal was dismissed. First, Parker J held that the reports were not to be received as fresh evidence. The psychologist report could have been obtained with reasonable diligence for use at the trial, it added very little to what was before the sentencing judge, and the psychologist was not completely briefed on the applicant's substantial criminal history. The report from Correctional Services also did not add anything significant to what would have been before the sentencing judge (see [50]-[67]).

Second, the head sentence was not manifestly excessive. This was in light of the gravity of the offending conduct, the abusive nature the relationship and the applicant's significant criminal history of violence. Parker J further rejected the submission that the two sentences ought to have been served concurrently. The offending conduct occurred almost five weeks apart (see [78]-[86]). The non-parole period was also not manifestly excessive. Considerations of deterrence, prevention and punishment militated towards a relatively higher non-parole period, as did the nature of the offences and the context in which they occurred (see [87]-[91]).

Third, the sentencing judge did not err in concluding that the appellant had extremely poor prospects for rehabilitation. The appellant had a long criminal history, including numerous convictions for assaults (many involving domestic violence). He also had many convictions for breach of restraining orders, failure to comply with bail agreements and breaches of bonds (see [92]-[96]).