

***R v Neilson* [2016] SASFC 90 (19 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*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘People who are gay, lesbian, bisexual, transgender, intersex and queer’ – ‘Physical violence and harm’ – ‘Post-separation violence’ – ‘Women’

Charges: Causing harm with intent to cause harm x 1; Aggravated assault x 1.

Appeal type: Appeal against sentence.

Facts: The appellant and one of the complainants (J) were divorced ([8]). The appellant went to the matrimonial house, where J lived with her new partner (M), the other complainant ([10]). The appellant pushed the J and M into the house. The appellant grabbed M around the throat, pushed her against a wall and punched her ([11]). The appellant picked J up off the floor and threw her onto the dining table ([13]). M suffered ongoing damage to her eye and both women suffered psychological consequences ([17]).

Issues: Whether the judge erred in not suspending the sentence.

Decision and Reasoning: The appeal was dismissed. The appellant had favourable personal circumstances, including his lack of criminal history, little risk of reoffending, remorse and lack of planning in the attack ([25]-[33]). Bampton J held that the sentence was within range, and those factors were reflected in the fixing of the non-parole period at approximately 42 percent of the head sentence ([41]). The favourable factors were appropriately balanced with the unfavourable factors, including the seriousness of the offence, the ongoing injuries, the fact that the offences were committed in the victims’ home, and the fact that the offences constituted domestic violence ([43]).