

***R v Carr* [2008] SASC 125 (13 May 2008) – South Australia Supreme Court**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘Antecedents’ – ‘Character’ – ‘Common assault’ – ‘Deterrence’ – ‘Emotional and psychological abuse’ – ‘Physical violence and harm’ – ‘Rehabilitation’ – ‘Sentencing’ – ‘Threatening life’

Charge/s: Common assault (two counts), threatening life.

Appeal Type: Appeal against sentence.

Facts: The victim was the appellant’s wife. There was a long history of physical and psychological abuse in the relationship. The assaults involved the appellant slapping and spitting on his wife. The threatening life offence involved the appellant holding a knife to his wife’s throat. He was sentenced to two years and five months’ imprisonment, with a non-parole period of twelve months.

Issue/s: Whether the sentence was manifestly excessive. In particular, whether the sentence should have been suspended.

Decision and Reasoning: The appeal was upheld and the appellant was re-sentenced to two years’ imprisonment with a non-parole period of 9 months. The appellant submitted that the sentencing judge erred in not sufficiently taking into account the time he spent in custody and in home detention and his prospects of rehabilitation. The respondent submitted that there was no error in the sentencing judge’s approach, and that the charges had to be considered against the background of domestic violence that occurred over the period of a 17 year marriage. The respondent argued that this made general deterrence of paramount importance. Anderson J (Doyle CJ and Bleby J agreeing), agreed at [31] that general deterrence is a very important consideration in sentencing where there has been a history of domestic violence in the relationship. This was applied at [38], where Anderson J held that the history of domestic violence in the relationship and the importance of general deterrence could not justify suspending the sentence. However, the sentencing judge erred in assessing the appellant’s prospects of rehabilitation as moderate. This was contradictory to the information that was before him, which included a lack of prior convictions and the fact the appellant no longer had a problem with alcohol abuse. The sentencing judge also erred by not specifying the extent to which he took the period of home detention into account.