

## ***Mullins v Police* [2013] SASC 148 (20 September 2013) – South Australia Supreme Court**

\*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘Aggravated assault’ – ‘Aggravating factor’ – ‘Breach of bail’ – ‘Contravention of intervention order’ – ‘Damaging property’ – ‘Double jeopardy and other charges’ – ‘Double jeopardy in sentencing’ – ‘Mitigating factors’ – ‘Physical violence and harm’ – ‘Resisting police’ – ‘Sentencing’ – ‘Victim’

Charge/s: Aggravated assault (three counts), Contravention of intervention order (three counts), breach of bail (two counts), resisting police, damaging property.

Appeal Type: Appeal against sentence.

Facts: The appellant pleaded guilty to all 10 offences which were on four Magistrates’ Court files. All of the offences were committed either against or in the presence of the appellant’s partner (the mother of his child) in the context of arguments. The contravention of the intervention order arose from conduct that would have made his partner feel threatened, as opposed to a positive intention to make her feel threatened or any physical contact. A single sentence was imposed for each file and the four sentences were made cumulative. None of the sentences were suspended.

Issue/s: Some of the issues concerned –

1. Whether the Magistrate erred in ordering a sentence of imprisonment for the resist police charge.
2. Whether the sentence imposed on the appellant contravened the rule against double punishment.
3. How the appellant should be re-sentenced.

Decision and Reasoning: The appeal was upheld.

1. One sentence of three months’ imprisonment was imposed for the resist police and the first aggravated assault charge. The Magistrate made no reference to the facts of the resist police charge, which was in fact not particularly serious and only involved ‘childish and idiotic’ behaviour (see at [15]) and nothing more. Even though the aggravated assault charge required a sentence of imprisonment, this did not mean that the resist police charge also required a sentence of imprisonment. A similar conclusion was reached in relation to the second Magistrates’ Court file, where the appellant was sentenced to one term of one month imprisonment for the breach of bail and contravention of intervention order offence. He should not have been punished for the breach of bail offence because he believed he was not in breach of bail, which was acknowledged by the Magistrate.
2. The facts that formed the basis of the contravention offence in the fourth file were the same facts that formed the basis of the aggravated assault charge. The facts that formed the basis of the second contravention offence relied on the same facts as the property damage charge. Therefore, Peek J found

that there was both 'double charging' and 'double punishment'. Convictions were recorded for four offences when they only should have been recorded for two and a penalty imposed for four offences when it only should have been imposed for two. It may have been possible to charge alternative offences, but once pleas of guilty were taken the other count should have been dismissed. Peek J did acknowledge the problem that where a breach is particularly serious, the maximum penalty for a contravention offence is two years, while the maximum penalty for offences such as aggravated assault is higher. In that case, his Honour stated that the best option would be to lay the more serious charge with the contravention offence laid as an alternative charge, to be withdrawn upon a guilty plea to the more serious charge. Furthermore, the fact that the offender knew that the assault was also a contravention of an intervention order would be an aggravating factor in sentencing the more serious charge.

3. In resentencing, his Honour took into account the appellant's youth, minimal criminal history and good rehabilitation prospects. He also took into account the victim impact statement, in which the complainant stated she wished to maintain a relationship with the appellant and stated that she is 'not a victim'. His Honour described this as a 'mature and balanced view of the relationship'. However, relevant also was the need to protect domestic partners, the repeated nature of the offending and the need to ensure intervention orders are obeyed. The appellant was re-sentenced to 50 weeks' imprisonment, fully suspended.