

***Vonstanke v Police* [2010] SASC 15 (4 February 2010) – South Australia Supreme Court**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘Aggravated assault’ – ‘Breach of bail’ – ‘Contravention of restraining order’ – ‘Evidence of prior abuse’ – ‘Following, harassing, monitoring’ – ‘Physical violence and harm’ – ‘Sentencing’

Charge/s: Aggravated assault (aggravating factor – that the offence was committed against the appellant’s domestic partner), contravention of restraining order (two counts), breach of bail.

Appeal Type: Appeal against sentence.

Facts: The appellant’s domestic partner believed the appellant was having an affair. She obtained documents from his computer. In attempting to get the documents back, the appellant pushed her backwards into a chair after grabbing her. The appellant prevented her from getting help by cutting the power to her telephone. She was fearful of the appellant. This conduct constituted the breach of the restraining order as well as the assault. After being arrested and released on bail with conditions that he not contact the victim, the appellant contacted the victim daily through the internet as well as by appearing at locations the victim drove to and sending her flowers. This conduct was in breach of bail and the restraining order. The offences were committed in the context of a background of domestic violence. The total effective sentence imposed was nine months’ imprisonment.

Issue/s: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. While the victim suffered no physical injury, she was isolated, in considerable fear and subjected to physical force while the applicant prevented her from obtaining assistance. The fact that this incident was not unique was also relevant - the physical assaults she had suffered from the appellant in the past were an important consideration. See in particular the following comments by Duggan J at [16] – *‘Personal and general deterrence play an important role in offences involving domestic violence. This is particularly so in the case of a repeat offender. Furthermore, Parliament has acknowledged the importance of deterrence in such cases by declaring that an offence of violence against a domestic partner is an aggravated offence attracting an increase in the maximum penalty over and above that applicable in the case of an offence of common assault. The fact that the assault constituted a breach of a restraining order made by the Court is a further factor to take into account in considering the single sentence imposed in respect of the assault and breach of restraining order.’*