

***R v Wilkinson* [2008] SASC 172 (4 July 2008) – Supreme Court of South Australia**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘Aggravated serious harm with intent’ – ‘Aggravating factor’ – ‘Bail’ – ‘Deterrence’ – ‘Following, harassing, monitoring’ – ‘History of abuse’ – ‘Physical violence and harm’ – ‘Sentencing’

Charge/s: Aggravated serious harm with intent, aggravated assault causing harm, aggravated harm with intent. (Aggravating factors – that the appellant knew the victim was his de facto spouse).

Appeal type: Appeal against sentence.

Facts: The appellant was on bail for an unrelated charge at the time of the offending. The first incident arose when the complainant went to collect the appellant (her de facto partner) due to the appellant’s curfew as a condition of his bail. The appellant reacted angrily to this, which led to the assault. She was admitted to hospital for four days. The complainant’s injuries were extremely serious with lasting effects including permanent facial and dental damage, ongoing amnesia, psychological issues and disfigurement. The appellant was arrested and eventually released on bail with conditions that he not approach or communicate with the complainant in any way. In breach of this bail, the appellant seriously assaulted the complainant again by punching her in the face, choking her, pulling her by the hair and throwing her into a mirror. The complainant again sustained serious injuries and required hospital treatment. There was a long history of domestic violence in the relationship, and one of the past incidents involved an assault by the appellant. The complainant called police but was unable to explain what occurred. When police returned the call, the appellant held a gun to the complainant’s head. She told the police all was OK and hung up. At the time of the offending, the appellant was 27 and the complainant was 17. They had been in a relationship for some years and the police had been contacted about domestic violence three times in the 12 months prior. The appellant had relevant criminal history apart from the history of domestic violence. He pleaded guilty and was sentenced to 7 years and 8 months’ imprisonment.

Issue/s: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. Gray J (with whom Sulan J and White J agreed) discussed the causes of domestic violence and the preferred response of the courts. See at [27]- [28] -

‘The causes of domestic violence are multiple. It has been recognised that relevant contributing factors include immaturity, mental illness, abnormal personality disorders, inhibition through drug abuse, poor anger management and lack of counselling and support. Courts have identified all of the above as common causative factors in modern times. Although imposing longer and longer terms of imprisonment does remove perpetrators from the community, domestic violence continues and its incidence increases. The imposing of sentences of imprisonment is a blunt instrument that does not adequately address the underlying causes of domestic violence in any real way.

The courts have long recognised that personal and general deterrence have a heightened significance when sentencing for the crimes of domestic violence. As King CJ observed in R v Banens (Unreported, Supreme Court of South Australia, King CJ, Legoe and Von Doussa JJ, 18 November 1987) at 7-8 :

“The sentence which is imposed by the court for a crime of domestic violence is aimed, in large part, at deterring other people who may be involved in like situations. I think that, in a serious case of domestic violence, it is necessary for this Court to make clear, by actual intervention, to the public that the sentences imposed for this type of crime are calculated to provide effective deterrence to those who might be tempted to commit similar crimes. Not only must the penalties imposed operate, as far as such penalties can, as an effective deterrent, but it must be made clear to the public that the courts are imposing sentences having that effect. It is a question not only of actual deterrence but assurance to the public that deterrent penalties are being imposed.”

His Honour went onto comment on the vulnerability of victims at [29] – ‘ Domestic violence is predominantly directed by men toward women. The community expects the law to protect women, to protect the weak from the strong, and to protect the vulnerable from the oppressor. These are factors that have led the courts to treat crimes involving domestic violence as grave crimes. Parliament has enacted laws designed to provide protection to those subjected to domestic violence. Parliament has recognised that crimes involving violence and assault may be aggravated by a domestic situation.’

This was particularly relevant on these facts as the victim/complainant was only 17. She had made multiple complaints to police but had received little protection, other than the no contact and no alcohol conditions of the appellant's bail. The Court did not make use of the wide powers under s 11 of the *Bail Act 1985*. While the bail agreement indicated there was to be supervision by a Community Corrections Officer, there is no evidence that this occurred. Also, the appellant was not required to undertake counselling to address his violence, alcohol abuse and anger issues. As such, in this case, the no contact condition provided little protection and the complainant was left vulnerable and in danger. The Court concluded that the sentencing judge was correct to take a serious view of the appellant's conduct. Over the preceding 12 months, the appellant had 'bullied, victimised and brutalised his younger partner' (See at [41]) and had continued this conduct notwithstanding the fact that the complainant sought protection from police and the bail conditions. Personal deterrence was important as the appellant had not been deterred by earlier warnings. General deterrence was also particularly important. See finally at [42] where Gray J referred to the fact that Parliament has made an assault in a de facto relationship an aggravating factor, which draws attention to the seriousness of this conduct. The Courts should pay due attention to this factor in sentencing.