

***R v Parisi* [2003] SASC 249 (14 August 2003) – Supreme Court of South Australia**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘Aggravating factor’ – ‘Assault occasioning bodily actual harm’ – ‘Contravention of restraining order’ – ‘Damaging property’ – ‘Deterrence’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Threatening life’

Charge/s: Damaging property (two counts), contravention of restraining order (two counts), threatening life, assault occasioning actual bodily harm.

Appeal Type: Appeal against sentence.

Facts: The appellant pleaded guilty in the District Court to all of the above charges. The victim was the appellant’s estranged wife. Prior to the offences, there was domestic and family violence that led to the restraining order being obtained. The property damage offences involved the appellant damaging his wife’s car. The threatening life and assault offences involved the appellant attending a house at which his wife was staying and producing a knife. He was allowed to enter the house after he handed over the knife and stated that he would not harm his wife. He then entered the house, grabbed his wife in a headlock and punched her in the face multiple times while threatening to kill her. She suffered a broken nose and black eye. The appellant’s criminal history included various drug and assault offences. A psychiatrist concluded that the appellant had developed a depressive disorder associated with the deterioration of his relationship, which had caused him to act aggressively and violently towards his wife and children over some years. His condition had not stabilised. He was sentenced to three years and two months’ imprisonment with a non-parole period of 18 months.

Issue/s: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was upheld. The appellant submitted that the primary judge did not adequately consider the appellant's rehabilitation and had given undue weight to his criminal history and the comments of the psychiatrist. He submitted that the sentence should have been suspended. However, the appeal was not upheld for these reasons. Rather, the original sentence was set aside due to an error with calculating the maximum penalties for the property damage offences. In re-sentencing, Nyland J (with whom Gray J and Debelle J agreed) concluded that while the two property damage offences might not appear particularly serious, they should be treated as part of an escalating course of conduct which culminated in the assault, which caused serious injury and would have been a terrifying experience. Her Honour also noted that the fact the conduct was committed in breach of a domestic violence order was an aggravating factor. General deterrence was significant to 'bring home to others who might be like-minded that the courts will not tolerate this type of behaviour' (See at [21]).' He was re-sentenced to two years and nine months' imprisonment with a non-parole period of nine months. The reduced length of the sentence gave credit for the appellant's guilty plea and time already served in custody and on home detention bail. The non-parole period was reduced to take account of the positive reports from the psychiatrist about the appellant's rehabilitation, such that he was no longer a threat to his wife and personal deterrence was no longer necessary.