

***Police v Dolan* [2010] SASC 341 (9 December 2010) – Supreme Court of South Australia**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘Breach of bail’ – ‘Common assault’ – ‘Guilty plea’ – ‘Physical violence and harm’ – ‘Pregnant women’ – ‘Programs for perpetrators’ – ‘Sentencing’ – ‘Trespass’

Charge/s: Common assault, trespass, breach of bail.

Appeal type: Appeal against sentence.

Facts: The defendant had been in a relationship with the victim for nine months. The victim was 8 weeks’ pregnant at the time of the offending. The defendant was the father and aware of the pregnancy. While the defendant and the victim were having a conversation, the defendant became aggressive, at which point the defendant punched her in the left side of the head which caused her to fall to the ground. He then kicked her in the head while she lay on the ground, which caused her to pass out. While she suffered no permanent injury, she experienced extreme pain. After being arrested and placed on bail, the defendant breached this bail by trespassing because he wanted to see if his partner was with another man. He again breached bail by having a conversation with his partner. He pleaded guilty and was placed on an 18 month supervised good behaviour bond, which included conditions that he obey the directions of a Correctional Services Officer, particularly in relation to attending programs for mental health, anger management and domestic violence. The Magistrate stated that a term of imprisonment would have been appropriate but for the guilty plea.

Issue/s: Whether the sentence was manifestly inadequate.

Decision and Reasoning: The appeal was upheld. Gray J held that the Magistrate erred by not paying sufficient regard to the fact that this was an act of domestic violence against a young pregnant woman, which was not justified by the fact that the defendant was angry. While the defendant was not charged with an aggravated assault based on a domestic relationship, this remained a relevant factor. The mere fact that the defendant pleaded guilty should not have resulted in a term of imprisonment not being imposed. Indeed, other factors, such as the fact that it was an offence of domestic violence required consideration. His Honour's starting point for common assault was 6 months' imprisonment, which was reduced to 4 months' because of the guilty plea and remorse. His Honour then had regard to the lack of criminal history and evident remorse and suspended the sentence, upon the defendant entering into a three-year good behaviour bond to be supervised for 18 months. Conditions that he attend anger management, drug and alcohol abuse and domestic violence programs were included. The convictions for the other offences were confirmed but no further penalty was imposed.