

***Murray v Police* [2015] SASC 64 (22 April 2015) – Supreme Court of South Australia**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘Assault’ – ‘Assaulting police’ – ‘Being unlawfully on premises’ – ‘Contravention of intervention order’ – ‘Damaging property’ – ‘Exposing a child’ – ‘Hindering or resisting police’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Prospects of rehabilitation’ – ‘Unlawful damage’ – ‘Verbal abuse’

Charge/s: Being unlawfully on premises, unlawful damage, assault (two counts), contravention of intervention order (three counts), hindering or resisting police (three counts), assault police (one count)

Appeal Type: Appeal against sentence.

Facts: The defendant was in an intermittent relationship with the victim. There were various incidents of verbal and physical violence over several years. This led the victim to apply for an intervention order which prohibited the defendant from approaching, contacting or communicating with the victim or her daughter. However, he returned to live with the victim on various occasions without the intervention order being changed. On the day in question, the defendant and the victim were arguing. The victim attempted to shut him out but he forced the door open, which knocked the victim onto the ground. He attempted to enter the victim’s daughter’s room multiple times to prevent her from calling the police. The daughter was pushing against it from the inside. He damaged various objects and threw a television across the room. He pushed the victim into a door frame and attempted to light a spray can while pointing it at the victim. He then pushed and attempted to punch two police officers, who had to use capsicum spray to subdue him. A psychiatrist diagnosed the defendant as suffering from an adjustment disorder with depressive features when he committed the offences. A single penalty for all offences of 14 months, 23 days’ imprisonment with a non-parole period of 8 months was imposed. The defendant’s history included one like offence of violence committed against the same victim. He had had previous long term relationships which did not involve violence. The Magistrate concluded that the defendant had no insight into the offences he committed, and that his prospects of rehabilitation were minimal.

Issue/s: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was upheld. Blue J found that while the Magistrate was rightly appalled at the nature of the violence, insufficient weight was given to the defendant's prospects of rehabilitation given the fact he had previous relationships that did not involve violence. The Magistrate also erred in not taking into account the lack of prior convictions for violence before his relationship with the victim and the psychiatric illness that he was suffering. He also had the support of a former long-term partner. As such, taking into account his pleas of guilty, he was resentenced to 11 months and 19 days' imprisonment. This was suspended after the defendant served 5 months and five days upon entering into a good behaviour bond for 18 months.