

***Callow v Police* [2014] SASC 8 (24 January 2014) - Supreme Court of South Australia**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

'Aggravated assault' – 'Contravention of bail agreement' – 'Contravention of intervention order' – 'Criminal history' – 'Damaging property' – 'Deterrence' – 'Following, harassing, monitoring' – 'Offender character references' – 'Physical violence and harm' – 'Sentencing'

Charge/s: Aggravated assault (2 counts) – Circumstance of aggravation: that the applicant committed the offence knowing the victim was his wife, aggravated assault causing harm, driving while disqualified, contravention of bail agreement (5 counts), contravention of intervention order (5 counts), property damage.

Appeal Type: Application for extension of time to appeal against sentence.

Facts: See at [4] for a detailed factual summary of each offence. The assault offences involved the appellant kicking his wife while she was in bed and on a separate occasion punching her when she was on the couch recoiling from the applicant. The contravention of the intervention order counts all involved the applicant leaving voicemail messages for his wife. The applicant was sentenced to a single term of 1 month imprisonment for all offences. The remaining eight months were suspended with a good behaviour bond.

Issue/s: Whether the whole sentence should have been suspended.

Decision and Reasoning: The application was dismissed. The applicant submitted that the Magistrate should have suspended the whole sentence based on the mitigating factors which led the Magistrate to suspend most of it. The Magistrate placed large weight on the mitigating factors, including that the applicant runs a successful business which he uses to help pay child support, as well as favourable character references. In fact, the Court described the sentence as 'merciful' given that the offending was repetitive, protracted and serious, and included 'contumacious disregard' of court orders (See at [10]). The Court also upheld previous authority that deterrence is an important factor in sentencing where there is a history of domestic violence, particularly breaches of intervention orders.