

## ***Director of Public Prosecutions v Karklins* [2018] TASCCA 6 (20 April 2018) – Court of Criminal Appeal of Tasmania**

‘Appeal against sentence’ – ‘Damaging property’ – ‘Emotional and psychological abuse’ – ‘Exposing children to domestic and family violence’ – ‘Listening to Victims’ – ‘Physical violence and harm’ – ‘Pregnant people’ – ‘Sentencing’ – ‘Vulnerable groups’

Charges: Assault x 1; Assault on a pregnant woman x 3; Attempt to interfere with a witness x 5; Destroying property x 1.

Appeal type: Prosecution appeal against sentence.

Facts: The respondent and complainant had been living together for 5 months with the complainant’s son ([6]). The complainant was 4 weeks pregnant at the time of the offences ([7]). The respondent threatened to leave the complainant, but the complainant asked him to stay ([9]-[10]). The respondent threatened to kill her and the baby. He headbutted the complainant and strangled her three times, causing her to lose consciousness twice ([13]-[16]).

The respondent was arrested and on remand. The respondent told a friend to tell the complainant that if she retracted her statement, he would ‘consider getting back with her’ ([22]). The complainant did so ([23]). The respondent was sentenced to 1 year and 10 months’ imprisonment with a non-parole period of 11 months.

Issues: Whether the sentence was manifestly inadequate.

Decision and Reasoning: Geason J emphasised aggravating features of the case, such as the fact that the respondent had the opportunity to reflect on his conduct between each attack ([55]), that he did not seek help for the complainant ([51]), that the crimes were committed in the context of a domestic relationship ([54]), and that the complainant was unable to defend herself ([50]). Mitigating considerations included the fact that the respondent pleaded guilty early ([61]).

In relation to the charges of interfering with a witness, Geason J at [56] remarked on the importance of such charges in aiding the administration of justice in relation to domestic violence:

The respondent's attempts to frustrate his prosecution should also be seen as particularly serious matters. They were a cynical exercise in emotional blackmail ... Domestic violence typically occurs behind closed doors, making detection inherently difficult. Relationship dynamics frequently militate against a prosecution. Conduct directed at interfering with the prosecutorial process undermines the system intended to afford protection to victims of violence, making an inherently difficult process more so ... It should be accepted in cases of family violence that attempts to interfere with the due administration of justice by the means of emotional manipulation of a vulnerable victim is a serious matter the consequences of which will always be severe.

Geason J referred to *R v Kilic* [2016] HCA 48, where the High Court stated at [21] that sentencing practices for offences involving domestic violence may 'depart from past sentencing practices for this category of offence because of changes in societal attitudes to domestic relations'. His Honour at [92] subsequently justified interfering with the sentence on the basis that:

Domestic violence is properly regarded as a most serious form of offending, frequently hidden from view, and thus difficult to detect. The court has a symbolic function. Censure for domestic violence should be communicated through the sentences which are imposed.

His Honour cautioned against giving weight to the complaint's forgiveness of the respondent ([77]). His Honour questioned the sentencing judge's generous characterisation of the respondent's conduct during the assault ([83]-[86]).