

## ***Lambie v State of Tasmania* [2007] TASSC 10 (7 March 2007) – Supreme Court of Tasmania**

‘Assault’ – ‘Denunciation’ – ‘Deterrence’ – ‘Just punishment’ – ‘Manifestly excessive’ – ‘Physical violence and harm’ – ‘Sentencing’

Charge: Assault (two counts)

Appeal Type: Appeal against sentence

Facts: The appellant was in an ‘up and down’ relationship with the complainant that was marked with arguments and assaults. On the day of the offence, the appellant attended the complainant’s home. An argument occurred and the complainant said she wanted to sort out the issues in the relationship. She stood in the doorway, preventing the appellant from leaving. The argument continued and the appellant grabbed the complainant and threw her backwards out of the way. The appellant then followed the complainant into their bedroom and shoved his motorcycle helmet into her chest, knelt on her chest and shouted in her face. The appellant later returned to the house and took her a glass of water. The assaults aggravated an existing unknown spinal condition and the complainant had to undergo surgery and suffered temporary and permanent disabilities. There were also lasting psychological impacts. The appellant had no relevant criminal history. He was sentenced to 12 months’ imprisonment with a non-parole period of 6 months.

Issue: One of the issues concerned whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was upheld on the basis of another ground of appeal (that the sentencing judge had taken extraneous or irrelevant material into account). In relation to the issue of manifest excess, Underwood CJ (with whom Blow J and Tennent J agreed) stated that the key consideration was ‘the extent of the appellant’s criminal culpability for the consequences of his direct and intentional applications of force’ because the sentencing judge sentenced on the basis the appellant was ‘culpably liable’ for all the consequences of his criminality ([19]). However, there were no submissions on this issue from counsel so the Court was reluctant to make a determination. In any case, it was not necessary to do so because the consequences of the appellant’s criminal conduct were not reasonably foreseeable by him and the exceptional circumstances were such that the consequences should carry little weight in sentencing.

In re-sentencing the appellant, the Court held that the conduct was serious and that, 'the nature of the criminal conduct was such that a sentence of imprisonment is called for to mark condemnation of this kind of domestic violence and to punish the appellant' ([31]). However, the lack of relevant prior convictions made a 12-month sentence manifestly excessive. The appellant was re-sentenced to six months' imprisonment, fully suspended on the condition that the appellant be of good behaviour for two years after his release.