

***Young v Wilson* [2015] TASSC 16 (28 April 2015) – Supreme Court of Tasmania**

‘Assault’ – ‘Breach of domestic violence order’ – ‘Deterrence’ – ‘Following, harassing, monitoring’ – ‘Non-parole period’ – ‘People affected by substance misuse’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Using carriage service’

Charges: Using a carriage service to harass, Breach of police family violence order (6 counts), Common assault

Appeal Type: Application for review of sentence

Facts: A police family violence order prohibited the applicant from approaching within 50 metres or contacting the complainant in any way. The breaches of this order involved the applicant phoning the complainant, sending her two text messages, threatening to kill her and punching her to the head and face. The punch also gave rise to the common assault charge. The carriage service offence involved the applicant phoning and sending eight menacing text messages to the complainant. The applicant had a substantial and relevant criminal history. A sentence of eight months’ imprisonment was imposed. This offending also activated previously imposed suspended sentences of imprisonment. This resulted in a total effective sentence of 26 months’ imprisonment with no parole eligibility.

Issue: Whether the sentence was manifestly excessive.

Decision and Reasoning: The application was allowed.

The eight-month sentence was not excessive. The applicant had previously shown a disregard for orders made in favour of the complainant. The assault offences were serious and the applicant did not appreciate this. A deterrent sentence was needed. It was not unjust to activate two of the previous suspended sentences resulting in six months’ imprisonment. However, a previous suspended term of imprisonment of 18 months for trespass, breaches of a family violence order and various traffic offences was substituted with a period of 12 months’ imprisonment. This was considered too harsh, given the other sentences of imprisonment to be served by the applicant and the fact the applicant has not reoffended with respect to the driving offences. Furthermore, there was no justification for not imposing a non-parole period. The applicant’s alcohol problem contributed to his ongoing offending behaviour: ‘The granting of parole may encourage reformation and increase the chances of rehabilitation under supervision through conditional freedom’ ([69]). He was resentenced to a total term of 18 months’ imprisonment with a non-parole period of nine months.

(Note also at [17]-[27] where Wood J made some general comments on the correct procedure to be followed for breaches of suspended sentences in Magistrates' Courts and at [37]-[53] which contains general consideration of totality, suspended sentences and non-parole periods).