

***Higgins v McCulloch* [2013] TASSC 49 (11 September 2013) – Supreme Court of Tasmania**

‘Assault’ – ‘Fines’ – ‘People with mental illness’ – ‘Perpetrator intervention program’ – ‘Physical violence and harm’
– ‘Recording a conviction’ – ‘Sentencing’

Charge: Assault

Appeal Type: Motion to review conviction and penalty

Facts: The applicant was found guilty of one count of assaulting his wife by punching her in the face. The complainant had died by the time the matter came to trial. The parties were living together in unusual circumstances and the assault occurred in a bedroom of the family home in the presence of an adult daughter. The applicant had no prior convictions. A good behaviour bond was imposed and a conviction was recorded.

Issues:

1. Whether the finding of guilt was reasonably open on the evidence.
2. Whether the magistrate erred in recording a conviction.

Decision and Reasoning: The notice to review was dismissed.

1. This argument was dismissed based on the evidence before the magistrate: see paragraphs [5]-[27].
2. At [33], Tennent J outlined the relevant issues to be considered when deciding whether to record a conviction. A court must consider the public interest, the need for an official record to be made of the commission of the offence and whether the victim might reasonably not feel vindicated by the failure to record a conviction. These factors are to be weighed against the benefits to the offender of a conviction not being recorded. This was a family violence offence. The applicant was not entitled to any discount for a guilty plea and did not display remorse. The applicant was suffering from mental health issues, which partly explained his ‘bizarre’ ([44]) behaviour that occurred in the background to the assault. There was nothing put before the magistrate indicating that recording a conviction would have an adverse impact on the applicant.