

## ***Moore v Rittman* [2018] TASSC 5 (13 February 2018) – Supreme Court of Tasmania**

‘Appeal against sentence’ – ‘Conviction not recorded’ – ‘Manifestly inadequate’ – ‘Perpetrator interventions’ – ‘Self-represented litigant’ – ‘Sentencing’ – ‘Strangulation’

Charges: Assault x 2; Breaching a police family violence order x 1.

Appeal type: Prosecution appeal against sentence.

Facts: The respondent and the aggrieved, his partner, were in a relationship and had 2 children. The assaults occurred on two occasions when the respondent choked his partner, causing her to lose breath and bruising ([4]). A police family violence order was made, requiring him to not return to the home where his partner and children were living ([5]). The police later found the respondent in the home ([6]). The respondent pleaded guilty to all charges ([7]). The respondent had no criminal history and had independently sought out participation in a men’s behavioural change program.

At the sentencing hearing, the magistrate did not ask the respondent to make submissions or to provide her with information as to his personal circumstances ([9]). The magistrate, pursuant to s 7(f) of the *Sentencing Act 1997* (Tas), did not record a conviction and adjourned the proceedings on the condition that the respondent be of good behaviour and complete the Men’s Behaviour Change Program ([1]). The charges were recorded as family violence offences under s 13A of the *Family Violence Act 2004* (Tas) ([10]).

Issues: Whether the sentence was manifestly inadequate.

Decision and Reasoning: Justice Brett first addressed the fact that the magistrate did not allow the respondent to make submissions. His Honour at [11] noted that:

In the case of an unrepresented defendant, it is incumbent on the magistrate to ensure that, not only is such an opportunity provided, but that the defendant is aware of his or her right to address the court, and given some assistance with respect to the nature of the matters and information which should be the subject of the plea.

Nonetheless, this error was not directly in issue so was not determinative ([12]).

His Honour next addressed the sentence. The prosecution argued that the failure to record a conviction renders the sentence manifestly inadequate ([12]). His Honour emphasised the importance of therapeutic interventions for first-time family violence offenders at [24]:

While a punitive and protective response is essential in cases of serious and repeated family violence, it must also be consistent with the stated purpose of the legislation that consideration is given to therapeutic intervention with a view to achieving rehabilitation and behavioural change, when an offender presents before the court for the first time in respect of acts of spontaneous family violence. Prevention of future violence by use of effective strategies to modify behaviour in respect of offenders who have appropriate insight and desire for change is likely to promote the safety, psychological wellbeing and interests of people affected by family violence.

His Honour emphasised that the good behaviour bond and conditions attached were tailored to the respondent's personal circumstances and was designed to rehabilitate the respondent and ensure that he did not reoffend ([20]). In all the circumstances, the sentence was not manifestly inadequate ([21]).