

## ***Burton v R* [2002] TASSC 64 (11 September 2002) – Supreme Court of Tasmania**

'Aggravated burglary' – 'Assault' – 'Damaging property' – 'Emotional and psychological abuse' – 'Exposing children' – 'Impact of offence on victim' – 'Manifestly excessive' – 'Physical violence and harm' – 'Risk factor - separation' – 'Sentencing' – 'Unlawful assault causing bodily harm'

Charges: Assault (2 counts), Aggravated burglary with intent to commit murder or assault

Appeal type: Appeal against sentence

Facts: The male appellant and the female complainant resided in a de facto relationship between May 2001 and 20 July 2001. The complainant had a six month old child. However, in July, the complainant informed the appellant she wanted to end the relationship. She went to live with her mother. On the morning of 29 July, the appellant smashed a window to enter the complainant's mother's flat, holding a large knife (count 1). He yelled, 'where is the fucking slut' and 'where is she'. He entered the complainant's bedroom, where she was sleeping with her child, shouting that he was going to kill her. The appellant dragged the complainant by her hair to the kitchen and started to cut her neck. She grabbed the blade of the knife and it snapped (count 2 and 3). The appellant dragged her outside the house (count 4) before calming down. The complainant sustained a superficial laceration to her neck and ongoing psychological injury.

The appellant was found guilty of assault at a first trial (count 4). At a second trial, he was found guilty of aggravated burglary (count 1) and assault (count 3). The assault subject of count 3 was framed as an alternative to counts alleging the commission of the crimes of attempted murder and committing an act intended to cause bodily harm (wounding). He was sentenced to three years and six months' imprisonment for the offences subject of the second trial. In respect of the assault, he was sentenced to three months' imprisonment cumulative on the first sentence.

Issue: One of the grounds of appeal was whether the sentence of three years and six months' imprisonment was manifestly excessive.

Decision and Reasoning: The appeal was allowed by all judges but with separate reasoning provided. Crawford J (with whom Underwood J agreed) held that the sentence of three years and six months was manifestly excessive. The sentence was well outside the range of sentences typically imposed for these types of offences ([20]-[23]). In light of the need for consistency, the sentence was set aside and a sentence of two years and three months' imprisonment was imposed.

Slicer J also found the sentence of three years and six months' imprisonment was manifestly excessive. The circumstances of the offences warranted the sentence namely, this was a case of 'home invasion' and 'domestic violence,' the appellant had prior convictions, he was not entitled to the benefit of a guilty plea, there was no evidence of remorse, and the impact on the complainant was likely to be long standing ([46]-[50]). However, the problem was not with the sentence but with the verdict. It was strange that the jury found that the evidence supported that there had been a 'cutting of the neck' but returned a verdict of not guilty of wounding. Nevertheless, the sentence was constrained by the jury's finding of assault, not wounding. On that basis alone, the sentence was manifestly excessive ([50]-[52]). His Honour agreed with Crawford J that a sentence of two years and six months' imprisonment was appropriate.