Maingay v Seabourne **[2009] TASSC 67 (19 August 2009) – Supreme Court of Tasmania**

'Assault' – 'Breach of domestic violence order' – 'Conditions of orders' – 'Damaging property' – 'Deterrence' – 'Following, harassing, monitoring' – 'Manifestly inadequate' – 'Physical violence and harm' – 'Risk factor - weapon' – 'Sentencing' – 'Vulnerable - new partner'

Charges: Breach of police family violence order (6 counts), Assault (2 counts), Breach of interim family violence order, Damaging property, Abuse of police

Appeal type: State appeal against sentence

Facts: The male respondent was sentenced by a magistrate in respect of numerous offences. The magistrate dealt with the offences in batches and the State sought review of a suspended sentence imposed in respect of two of these batches. The first batch of offences pertained largely to charges of stealing. More relevantly, the second batch of offences related to a number of breaches of police family violence orders. On 12 December 2005, a police family violence order was made for the protection of Cassandra Deering. The respondent breached this order by head-butting and punching Ms Deering. On 5 January 2007, a second police family violence order was made. The respondent breached this by approaching Ms Deering, damaging the car belonging to her new partner, and sending a threatening text message. A number of these breaches occurred while the respondent was on bail for earlier breaches.

On 2 October 2008, a police family violence order was made for the protection of Dana Smith. The respondent breached this order by kicking Ms Smith in the head. He also said she was lucky he did not slit her throat and that he should have snapped her neck. On 27 October 2008, an interim family violence order was made which required the respondent to immediately surrender firearms. The respondent also breached this order.

Issue: Whether the sentence was manifestly inadequate.

Decision and Reasoning: The sentence imposed in respect of the batch of offences incorporating the family violence offences was manifestly inadequate. The respondent was a repeat offender. He showed a complete disregard for the orders made to restrict his behaviour and should have felt the full effect of a deterrent sentence, notwithstanding his age and lack of a prior history. If his offending had extended only to breach by approach (potentially instigated by the protected person) the outcome would have been different. However, the respondent's offending went far beyond that; it extended to physical assaults against two separate female partners ([24]).

Her Honour noted that, *'While it is accepted that, at the time the respondent was dealt with for all of this offending, he was still a young man with no relevant prior history, the legislation pursuant to which he had been charged was enacted to protect members of the community, and in particular to protect persons in close relationships with offenders. Deterrent sentences were required to give effect to that legislation … However, in practical terms, it is impossible in my view to argue that the deterrent effect of an actual term of imprisonment is the same as that of a suspended term of imprisonment'* ([23]).

The respondent was ordered to serve a period of four months' imprisonment. Although it might have been unfair in all the circumstances to impose a custodial sentence several months after his release, if the error in the sentence was not corrected, the perception would remain that the sentence imposed lacked the requisite deterrent effect ([26]-[30]).