

***Sandle v Crofts* [2001] WASCA 106 (30 March 2001) – Western Australia Supreme Court (Court of Appeal)**

‘Assault occasioning bodily harm’ – ‘Exposing a child’ – ‘Mitigating factors’ – ‘Physical violence and harm’ – ‘Provocation’ – ‘Sentencing’

Charge/s: Assault occasioning bodily harm.

Appeal Type: Appeal against conviction and sentence.

Facts: The appellant arrived home late at night and asked his wife if she had had anyone in the house while he was overseas. She said no, at which point he punched her in the face. She then told him she did have a man in the house. He then started hitting her in the face and head with closed fists. He pulled her by the hair to a chair. He then hit her again and kicked her in the side while on the floor which caused her to black out. She was awoken by her son calling for her. Fearing for her life, she jumped off the balcony which was about three metres off the ground. The appellant tried to drag her up the stairs by the ankles which she resisted. She sustained severe injuries. The defence case was that the complainant’s injuries were as a result of self-harm and she jumped off the balcony by choice. The appellant had no criminal history. He was sentenced to 12 months’ imprisonment with parole.

Issue/s:

1. Whether the conviction was unreasonable and cannot be supported having regard to the evidence.
2. Whether the sentence was manifestly excessive and whether the Magistrate gave insufficient weight to the ‘mitigating circumstances of great provocation’ leading up to the incident.

Decision and Reasoning: The appeal was dismissed.

1. This argument was dismissed – see at [28]-[50].
2. McKechnie J found that this offence was ‘a vicious assault by a husband upon his wife without reason or provocation’ (see at [52]) and that in cases of domestic violence a sentence encompassing general and personal deterrence is called for. The Court then held that a 12-month term of imprisonment was called for given the circumstances of the offence. However, the Court did acknowledge that given this was the appellant’s first offence (he had no history of violence), it may have been appropriate for the sentence to be suspended for two years so as to provide for rehabilitation. However, ultimately the 12-month sentence was within the discretion of the Magistrate.