

***Vickers v Bailey* [2000] WASCA 136 (19 May 2000) – Supreme Court of Western Australia (Court of Appeal)**

‘Assault’ – ‘Deterrence’ – ‘Exposing a child’ – ‘People with mental illness’ – ‘Perpetrator intervention program’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Suspended sentence’ – ‘Verbal abuse’

Charge/s: Assault (eight counts).

Appeal Type: Appeal against sentence.

Facts: The complainant was the appellant’s de facto partner. After returning home intoxicated, the appellant ‘lost the plot’ after discovering that the cat had defecated on the bed. He assaulted the complainant. The following day, there was a further altercation and the appellant assaulted the complainant several times, including by squeezing her throat, throwing coffee and the contents of an ashtray over her and ‘(pushing) up her chin and started spitting into her face’ in the presence of their children. The complainant then obtained a restraining order against the appellant but was unable to particularise many of the assaults due to the length and nature of the incident. The appellant conceded that the assaults were a build-up of frustrations over the last 12 months of the relationship and submitted that he suffered from depression, was remorseful and had never previously been violent towards the complainant. The appellant was sentenced to 9 months’ imprisonment for each count, to be served concurrently.

Issue/s: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was upheld. The appellant submitted that notwithstanding the seriousness of the offending, a sentence of imprisonment was not the only option. Counsel for the respondent submitted that while each assault in isolation may have warranted a lesser penalty, the combination of all the counts and the time period over which they were committed aggravated the circumstances of the offence. The respondent also submitted that cases of domestic violence call for a sentence of personal and general deterrence.

Miller J agreed but emphasised that regard must be had to the individual circumstances of the case – *‘I entirely agree with the submissions of counsel for the respondent that in general terms, a deterrent sentence for domestic violence offences will be called for. Much, however, depends upon the extent of the violence. Whilst here there were multiple offences and offences committed over a period of time, the complainant fortunately appears to have escaped injury. Further, seven of the offences appear to have occurred as one group of offences. Additionally, the appellant does not appear to have ever assaulted his de facto in the past, there being no allegation to that effect in the pre-sentence report, statement of facts or elsewhere and there being no victim impact statement from the complainant’* (see at [12]). Miller J noted the pre-sentence and psychological report which suggested the appellant needed counselling in relation to anger. The appellant himself initiated contact with a domestic violence program and was proposing to participate in that program. As such, the Court found that the appellant should have been given the opportunity of a suspended sentence as an inducement for him to reform.