

***Gallegos v R* [1999] WASCA 191 (6 October 1999) – Supreme Court of Western Australia (Court of Appeal)**

‘Complainant and applicant ex-lovers’ – ‘Complainant pregnant at time of assault’ – ‘Domestic violence’ – ‘Sentence not excessive’

Charge/s: Aggravated burglary and assault occasioning bodily harm

Appeal type: Application for leave to appeal against sentence.

Facts: the applicant and complainant shared a brief sexual relationship, but did not live together. The applicant saw the complainant in a night club in Fremantle. He spat on her and wiped faecal material on her face. She went home. He followed her, without permission. At the house, he punched her repeatedly and kicked her. He also threatened her with a knife. The assault caused significant injuries to the complainant. The applicant pleaded guilty and, at first instance, was sentenced to three and a half years’ imprisonment.

Issue/s: Whether the sentence was manifestly excessive.

Decision and Reasoning: Application refused. The applicant was self-represented. Chief Justice Malcolm considered that the way in which the earlier assault at the night club had preceded the aggravated burglary showed some persistence in the offending. It also exhibited an element of premeditation. The seriousness of the offending was elevated by the fact that the applicant knew that the complainant was pregnant at the time and the nature of the attack was such that no regard was paid to the safety of the foetus. His Honour said at [28]:

“It is now clear that in cases of domestic violence a sentence which gives effect to both personal and general deterrence will normally be called for. The circumstances may be such as to justify a substantial sentence of imprisonment”.