

***McLaughlin v The State of Western Australia* [2012] WASCA 204 (12 October 2012) – Supreme Court of Western Australia (Court of Appeal)**

‘Arson’ – ‘Assault occasioning bodily harm’ – ‘Damaging property’ – ‘Physical violence and harm’ – ‘Possess weapon’ – ‘Sentencing’ – ‘Threat to kill’ – ‘Totality’

Charge/s: Assault occasioning bodily harm, making a threat to kill (two counts), arson, possessing a weapon.

Appeal Type: Application for leave to appeal against sentence.

Facts: After consuming alcohol, an argument between the appellant and his current partner ensued. He threw an ashtray which hit her in the back. He used a knife to cut the cord to a vacuum cleaner that she was using. Later, he spat on, grabbed and shook her. He then used the knife to smash a coffee table and stab walls while threatening to kill her, her son and others. He prevented her from leaving the lounge room. She was fearful of him and remained awake all night. After being arrested and released on bail for these offences (assault and threat to kill), the appellant broke into the home of his estranged wife, ignited a lounge chair and again made threats to kill by leaving voice messages on her mobile phone. The appellant had a history of violent offending against his partner and his estranged wife. A psychologist described him as having ‘deep seated rejection fears’ attributable to his traumatic childhood. The total effective sentence imposed was four years eight months’ imprisonment.

Issue/s: Whether the total effective sentence infringed the first limb of the totality principle.

Decision and Reasoning: Leave to appeal was refused. The Court noted the extremely serious nature of arson and the fact that the maximum penalty is life imprisonment. Buss JA (Mazza JA agreeing) provided a summary of sentencing patterns for arson at [48]-[58]. The fire had a potential to destroy the house. His Honour also noted the threats to kill against his partner, ‘occurred in the context of a persistent course of conduct designed to denigrate and humiliate (her) and cause her intense fear and anxiety’ (See at [68]). As such, the sentence was not disproportionate.