

***Bartlett v Scantlebury* [2000] WASCA 234 (29 August 2000) – Supreme Court of Western Australia (Court of Appeal)**

‘Assault’ – ‘Deterrence’ – ‘Following, harassing, monitoring’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Verbal abuse’

Charge/s: Assault.

Appeal Type: Appeal against sentence.

Facts: The appellant was in a de facto relationship with the complainant. On Christmas Day 1999, the appellant was heavily intoxicated. An argument occurred. The appellant then assaulted the complainant by squeezing her arms and pulling her hair while she attempted to leave the house. The Magistrate also accepted that the appellant had engaged in intimidatory and threatening conduct over the previous two days. The appellant’s evidence differed substantially. The Magistrate found that the appellant’s evidence was contrived and manipulative and sought to paint his actions without fault. The Magistrate noted the protracted and serious nature of the offending. The complainant was left with no substantial physical injuries but there was a significant mental impact. The Magistrate also noted the fact that domestic violence cases are insidious, difficult to detect and have significant implications for the parties and the general community (see at [8]). The appellant was sentenced to 12 months’ imprisonment with parole eligibility.

Issue/s: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was upheld.

Miller J disagreed with the Magistrate’s conclusions that deterrence outweighed all other sentencing considerations and that the seriousness of the offence meant that the only justifiable sentence was imprisonment. His Honour noted that this case concerned only one assault, which was the combination of seizing the complainant by the arm and pulling her hair. The Court also held that the Magistrate had placed undue weight on the events leading up to the assault and noted that the appellant had only been charged with one offence. While it was appropriate to take into account the traumatic effect of the assault on the complainant and correct that assaults involving domestic violence call for deterrent sentences, ‘this assault could not be categorised as being of the most serious kind’ and the description of it as such was an ‘over-reaction to the facts of the case’ (see at [17]). Miller J therefore set aside the sentence of imprisonment and fined the appellant \$6000.