

***Ugle v The Queen* [2001] WASCA 268 (31 August 2001) – Supreme Court of Western Australia (Court of Appeal)**

‘Assault occasioning bodily harm’ – ‘Exposing a child’ – ‘High risk’ – ‘People affected by substance abuse’ – ‘Perpetrator intervention program’ – ‘Sentencing’ – ‘Unlawful wounding with intent to cause grievous bodily harm’

Charge/s: Assault occasioning bodily harm, unlawful wounding with intent to cause grievous bodily harm.

Appeal Type: Application for leave to appeal against sentence.

Facts: The applicant was in a de facto relationship with the complainant and had 1 child. The assault offence occurred after the couple split up. The applicant repeatedly called the complainant. He approached the complainant as she walked to a shopping centre. He then grabbed her by the hair and punched her to the back and head. The applicant made numerous threats to kill the complainant during the assault and she attempted to run away but he dragged her back. The unlawful wounding offence involved the applicant forcing his way into the complainant’s house. He stabbed her numerous times in the chest, back and neck and also attempted to stab her in the face. She pretended to be dead so as to stop the attack. While he was in remand, police officers made a number of telephone calls on the applicant’s behalf indicating that he wished her to visit him. She did not do so and moved into a refuge after her release from hospital. However, her whereabouts was discovered by members of the applicant’s family so she was forced to move. The complainant suffered lasting psychological injuries and her daughter was severely traumatised as the events occurred in her presence. The applicant was sentenced to three years’ imprisonment for the assault offence and 9 years’ imprisonment for the wounding offence, to be served cumulatively such that the total effective sentence was 12 years, with parole eligibility.

Issue/s: One of the issues concerned whether the sentences were manifestly excessive.

Decision and Reasoning: Leave was granted and the appeal was upheld.

The appellant submitted that the 9-year sentence imposed for the unlawful wounding offence was excessive. Malcom CJ (with whom Steytler J and Burchett AUJ agreed) held that this was a vicious, pre-meditated attack which put the complainant's life in danger. Nevertheless, the sentencing judge's starting point for the wounding offence (before the applicant's guilty plea) was 12 years, which the Court held was excessive and that a starting point of 9 years would have been appropriate. It was noted at trial that the appellant remained a high risk of reoffending and prison based alternatives to violence programs to develop more appropriate strategies for resolving conflicts in relationships were recommended. This recommendation was not disapproved by the Court of Appeal. The appellant was re-sentenced to 6 years' imprisonment for the wounding charge, which resulted in a total effective sentence of 7 years and 4 months.