

***Oxenham v The State of Western Australia* [2015] WASCA 30 (18 February 2015) – Supreme Court of Western Australia (Court of Appeal)**

‘Aggravated assault occasioning bodily harm’ – ‘Aggravating factor’ – ‘Exposing a child’ – ‘Grievous bodily harm with intent’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Separation’

Charge/s: Grievous bodily harm (GBH) with intent, aggravated assault occasioning bodily harm (aggravating factor – the appellant was in a family and domestic relationship with the victim).

Appeal Type: Appeal against sentence.

Facts: The appellant was in a de facto relationship for 8 years. After they separated, his former partner commenced a new relationship with a work colleague and the appellant reacted poorly. The appellant attended his former partner’s home and pleaded to recommence the relationship. The appellant went with his former partner to their children’s bedroom. In the presence of their children, he demanded to see her phone. He read through her text messages, threatened to kill her and repeatedly kicked her in the shins. He then used his former partner’s phone to lure her new partner to the house. When her new partner arrived, the appellant attacked him by punching him in the face and continued to kick and punch him while he lay on the ground, again in the presence of their child. He dragged her new partner outside. He taunted his former partner and children to look at the injuries that he was inflicting. The appellant forced his former partner to kiss her new partner while he was unresponsive on the ground and used substantial force to do this. He photographed her new partner’s injuries and sent it to her friend. The injuries sustained by his former partner were relatively superficial, but her new partner sustained extremely serious injuries. The appellant had favourable antecedents with no relevant criminal history and was regarded generally as a person of good character. He pleaded guilty and was sentenced to a total effective sentence of 7 years and 6 months’ imprisonment for both offences (six years’ imprisonment for the GBH offence committed against the new partner and 18 months’ imprisonment for the assault offence committed against his former partner).

Issue/s:

1. Whether the offence imposed for GBH was manifestly excessive.
2. Whether the total effective sentence infringed the first limb of the totality principle.

Decision and Reasoning: The appeal was dismissed.

1. The attack against his former partner’s new partner was extremely serious and left permanent injuries. There were elements of premeditation and deception. The attack was not provoked and committed in the presence of children. The offending was at the upper end of the scale of criminality for offences of a

similar character. See in particular at [34] where Martin CJ (Buss JA and Mazza JA agreeing) noted at [34], *'The breakdown of personal relationships is an inevitable aspect of contemporary society, and often causes anger, frustration and jealousy. (The appellant) responded to those emotions with particular brutality... The community rightly expects the courts to denounce conduct of this kind in the clearest of terms, and to impose a sentence which reflects the community's abhorrence of serious offences of domestic violence of this character.'*

2. The appellant submitted that the total effective sentence of 7 years and 6 months' imprisonment did not bear a proper relationship to the criminality involved in the two offences. Martin CJ (Buss JA and Mazza JA agreeing) held that while both offences were related and stemmed from the same motive, they were separate and required distinct punishments. In those circumstances, and also considering the various mitigating and aggravating circumstances, the Court held that the sentence was not disproportionate to the overall criminality involved.