

***Abfahr v The State of Western Australia* [2013] WASCA 87 (5 April 2013) – Supreme Court of Western Australia (Court of Appeal)**

‘Deterrence’ – ‘Failing to report car accident’ – ‘Failing to stop after car accident’ – ‘Grievous bodily harm with intent’ – ‘Orders affecting children’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Suspended sentence’

Charge/s: Grievous bodily harm with intent, failing to stop after a car accident, failing to report a car accident to police.

Appeal Type: Application for leave to appeal against sentence.

Facts: The appellant had been in a relationship with the victim for 16 years. They had two children. Both parties claimed to have been the subject of threats and violence by the other. The appellant was served with an interim violence restraining order. He received a call from his children who said that their mother was not home and requested food. While claiming to be driving to a supermarket to purchase food for his children, he saw the victim at a bus stop. Once the victim had alighted from the bus, the appellant drove onto the footpath and struck her with the middle of the bonnet. She was thrown into the air and landed on the pavement, causing serious injuries. He continued without stopping – he claimed he saw her attempt to get up and assumed she was okay. A psychologist’s report indicated that the appellant showed no empathy or remorse, and that rehabilitation would be difficult. Another psychologist’s report indicated that the victim had significant mental health issues and serious difficulties in providing adequate care for her children. A total effective sentence of 5 years’ imprisonment was imposed.

Issue/s:

1. Whether the trial judge erred in failing to suspend the term of imprisonment.
2. Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed.

1. The appellant submitted that in not suspending the term of imprisonment, the trial judge erroneously concluded that the inability of the victim to care for her children was due to the appellant’s conduct. This argument was rejected. The trial judge’s conclusions were that the victim was unable to care for her children due to her mental illness and that the appellant also contributed to her incapacity because of his having caused her grievous bodily harm.
2. In noting the ‘egregious’ nature of the offending, Buss JA (with whom McLure P and Mazza JA agreed) held that the sentence was appropriate. Punishment and deterrence (both personal and general) were the relevant considerations, in the absence of any significant mitigating factors and the appellant’s lack

of remorse and prospects of rehabilitation. While the sentence will cause the children to suffer 'hardship and distress' (see at [80]), his Honour was not persuaded that this amounted to an 'extreme or exceptional case' or that the hardship would be severe enough to warrant a lesser sentence.