

## ***Elliot v Blanchard* [2007] WASC 289 (14 November 2007) – Supreme Court of Western Australia**

‘Assault occasioning bodily harm’ – ‘Deterrence’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Verbal abuse’

Charge/s: Aggravated assault occasioning bodily harm (circumstance of aggravation: that the appellant was in a family and domestic relationship with the victim).

Appeal Type: Appeal against sentence.

Facts: The appellant was in an intimate personal relationship with the complainant after meeting on the internet. The appellant was intoxicated. An argument occurred and the appellant verbally abused the complainant. He then pushed her into a chair, threatened to kill her and grabbed her around the throat almost to the point of making her lose consciousness. He repeatedly slapped her face and choked her for several minutes. He threw her into a bed before dragging her by the arms into another room. The appellant then calmed down and stated that the complainant was free to leave but informed her that he was in possession of two firearms. The complainant made him dinner to pacify him and eventually managed to escape. The appellant later left a message on her phone in which he apologised for hitting her. She sustained various injuries including bruising and swelling. The appellant pleaded guilty and was sentenced to 12 months’ imprisonment with parole eligibility.

Issue/s: One of the issues concerned whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was upheld in respect of other issues such as the weight given to the plea of guilty and the time already spent in custody and the sentence was reduced by 1.5 months. In relation to the issue of manifest excess, the appellant emphasised the effect of alcohol and prescribed medication which he was taking as well as his prior good character, remorse and progress in rehabilitation. However, McKechnie J held that the Magistrate was not in error. While this was the appellant’s first violent offence, he had a number of previous offences of driving while intoxicated and on the day of the offending he had been fined \$8000 for other offences which he had committed while intoxicated. The Magistrate did sufficiently take the appellant’s remorse into account. His Honour also noted that there is no offence of domestic violence. It is a term which ‘euphemistically describes serious criminal conduct’ (see at [10]). In this case, the offending was particularly serious. The sentence was appropriate, taking into account the public interest in general deterrence and just punishment.