

***Bropho v Hall* [2015] WASC 50 (9 February 2015) – Supreme Court of Western Australia**

‘Aboriginal and Torres Strait Islander people’ – ‘Aggravated common assault’ – ‘Breach of protective bail condition’ – ‘Exposing children’ – ‘Physical violence and harm’ – ‘Women’

Charge/s: Aggravated common assault, breach of a protective bail condition.

Appeal type: Appeal against sentence.

Facts: The appellant, a male Aboriginal man, was in a domestic and family relationship with the female victim. The appellant and the victim had been drinking alcohol with three friends. Their two children were also present. The appellant took exception to a comment made by the victim about his behaviour towards one of her female friends. He grabbed the victim by the T-shirt, causing scratches to the side of her neck. They continued shouting at each other. The appellant punched the victim in the face, causing bruising and swelling to her left eye. The victim moved away but was followed by the appellant and he delivered a further blow to the side of her head. The appellant stopped hitting the victim after their two children told him to stop. The appellant was arrested and entered into a bail undertaking with protective conditions. He breached those bail conditions by attending and remaining at the home of him and the victim. The appellant was sentenced to 15 months’ imprisonment for the aggravated assault and 2 months’ imprisonment for the breach of protective bail condition, served cumulatively.

Issue/s: One of the grounds of appeal was that the sentences imposed for the aggravated assault and breach of protective bail conditions were manifestly excessive.

Decision and Reasoning: The appeal was allowed. The case represented a relatively serious example of the offence of common aggravated assault involving domestic violence, falling within the midrange of these types of cases (See [24]). It involved two circumstances of aggravation. First, the appellant was in a family or domestic relationship with the victim. Mitchell J provided:

'The fact that the aggravated assault occurred in a domestic setting is a significant aggravating factor of the offence. An offence of this nature generally involves an abuse of the trust which one partner places in another, often where the victim is in a vulnerable position by reason of greater physical strength of the offender. The vulnerability of the victim is generally increased by the difficulty which she (it is usually a she) may have in extricating herself from the situation. As McLure P has noted, the readiness of many victims to return to, or remain in, a relationship with the perpetrator is a hallmark of domestic violence. Recognising that common feature, it remains important for a court sentencing an offender for that kind of offence to take account of the need to protect persons in that vulnerable position, so far as the courts can do so by the imposition of a sentence, bearing a proper relationship to the overall criminality of the offence, which has a deterrent effect and, in an appropriate case, removes the offender to a place where there is no opportunity to violently attack their partner' (See [16]).

The second circumstance of aggravation was that children were present when the offence was committed. Mitchell J noted:

'The facts of this case illustrate a tragic cycle of violence with which the courts are depressingly familiar. A person exposed to domestic violence in his early life goes on as an adult to perpetrate the violence to which he was exposed as a child, damaging members of his community in the same way he was damaged as a child. For that reason, the fact that the appellant's offence was committed in the presence of children was a significant aggravating factor' (See [18]).

However, following an examination of cases, Mitchell J held that cases where a sentence of 15 months' imprisonment had been imposed involved a significantly greater level of violence than committed by the appellant here. The sentence was manifestly excessive (See [23], [35]-36]). The appellant was resentenced to an intensive supervision order.