***Warne v The Queen* [2020] SASCFC 124 (21 December 2020) – South Australian Supreme Court (Full Court)**

'Appeal against re-sentence' – 'Appeal against sentence' – 'Misuse of alcohol or drugs' – 'Physical violence and harm' – 'Protection orders' – 'Self-defence' – 'Separation' – 'Strangulation' – 'Threats to kill' – 'Weapons'

Charges: Basic assault x 1; Aggravated assault causing harm x 2; Possession of a Class A firearm without a licence x 1; Aggravated threatening life x 1; Aggravated assault x 3.

Proceedings: Appeal against re-sentence (re-sentence was imposed following a successful appeal against conviction).

Facts: The offences occurred in connection with a domestic relationship between the appellant man and his female former partner. The appellant was convicted of 8 charges following a trial by jury. He was sentenced to 4 years and 5 months imprisonment, with a non-parole period of 3 years. The appellant successfully appealed his conviction on one count of aggravated assault causing harm. The re-sentencing arising from the appeal against conviction was undertaken by a different judge, as the first sentencing judge had retired. The re-sentencing judge imposed a sentence of 4 years and 9 months imprisonment, with a non-parole period of 3 years and 4 months.

Grounds of appeal:

1. It was an error to impose a head sentence and a non-parole period that was greater than that which had been imposed prior to the appellant's successful appeal.
2. The re-sentencing judge's starting point was too great.
3. The re-sentencing judge erred in finding that home detention was not appropriate in all the circumstances.
4. The re-sentence was manifestly excessive.

Held: The appeal was allowed. Based on the submissions made to the re-sentencing judge and the content of the sentencing remarks made, Hughes J (with Peek and Stanley JJ agreeing) inferred that the re-sentencing judge overlooked the approach to be taken when imposing subsequent sentences for the same offending identified in *R v Baltensperger* [2004] SASC 392. In re-sentencing, the judge is "required to firstly have regard to the original sentence and only upon concluding that if there is good reason to depart from it, sentencing in a different manner. Where there is a departure, it would be appropriate to provide some explanation for it and in this case, there was none" (at [41]). This inference gained further support by the lack of significant disparity between the re-sentence and the original sentence (at [42]).

After considering the relevant circumstances, Hughes J held that the original sentence was not manifestly excessive (at [48]-[56]).

However, the circumstances concerning the count of aggravated assault causing harm, which was successful on appeal, were to be properly viewed as separate from the other acts as charged, thereby not attracting principles of concurrency. This was therefore the basis for imposing a sentence lower than the original sentence namely, 4 years' imprisonment with a non-parole period of 2 years and 8 months (at [57]-[59]).