

## ***R v Mark* [2019] SASCFC 48 (9 May 2019) – South Australia Supreme Court (Full Court)**

‘Appeal against sentence’ – ‘Grounds for interference’ – ‘Sentence manifestly excessive’

Charges: 1x aggravated assault, 1x breach of a suspended sentence bond.

Appeal type: appeal against sentence for the above offences.

Facts: the appellant punched his domestic partner in the face. In doing so, the appellant breached the intervention order in place at the time which prohibited the appellant from assaulting, threatening or intimidating his domestic partner. The appellant entered a guilty plea to the assault charge and the matter was transferred to the District Court for sentencing with the breached bond and other matters. An 11-month sentence was imposed for the aggravated assault while the suspended sentence was revoked and a six-month sentence (subject of the good behaviour bond) was ordered to be served cumulatively on the sentence for the aggravated assault.

Issues: the appellant’s grounds of appeal were two-fold. First, the sentence imposed for the aggravated assault was manifestly excessive ([6]). Second, the judge erred in sentencing the appellant on the basis that the offence was committed against a background of previous domestic violence ([6]).

Decision and reasoning: appeal was allowed, sentence imposed by trial Judge was set aside and the appellant was resentenced (see [36]).

His Honour first set out the authority and principles relevant to determining whether to interfere on appeal with a decision on sentence and whether a sentence is manifestly excessive ([17]-[21]).

His Honour rejected the appellant’s submission that the assault was on the lower end of the scale of seriousness. A single punch to the face was deemed serious by his Honour in light of the fatal consequences such an action may have had ([23]-[24]). It’s seriousness was also heightened by the fact it was committed with an intervention order in place at the time which aimed to protect the victim from the assault that occurred ([27]).

Whether the starting point of 18 months for a first offence of violence produced a sentence outside the permissible range for the offending and offender in question was determined in reference to multiple factors. First, the importance of specific and general deterrence in sentencing for offence of domestic violence lent some justification to the sentence imposed ([26]). Second however, the offender's poor track record of responding to the leniency extended to him by the courts (see [10]) was considered in light of his personal and mitigating circumstances ([28]). Ultimately, notwithstanding the seriousness of the offending, and having regard to the fact that the assault was the appellant's first offence of violence, his Honour concluded that a starting point of 18 months was too high and outside the permissible range of sentences for this offending and this offender ([31]).

The second ground of appeal was allowed since the factual basis of the judge's sentence lacked a sufficient foundation on the evidence presented to the court and wasn't actually conceded by the appellant ([32]).