

***R v Sykes* [2017] SASCFC 59 (31 May 2017) – South Australia Supreme Court (Full Court)**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘Burglary’ – ‘Contravention of a protection order’ – ‘Kidnapping’ – ‘Separation’ – ‘Sexual and reproductive abuse’

Charges: Aggravated serious criminal trespass in a place of residence x 1; Aggravated kidnapping x 1; Aggravated threaten life x 1; Aggravated indecent assault x 1; Aggravated assault causing harm x 1; Aggravated threaten harm x 2; and threaten harm x 1; Breach intervention order x 1.

Appeal type: Appeal against sentence.

Facts: The appellant and victim had been in a relationship ([6]-[7]). Shortly after the relationship had ended, the appellant entered the victim’s house at midnight ([9]). He bound her arms and legs, blindfolded her and removed her clothes ([11]). He told her that he was going to cut off her nipples, breasts and fingers, break her nose, penetrate her with objects, and drive her to a secluded place to make her suffer ([12]-[16]). The offending continued for at least several hours ([22]). The appellant pleaded guilty to the offences. He was sentenced to 11 years and one month imprisonment with a non-parole period of six years.

Issues: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. Parker J, Vanstone J and Blue J agreeing, held that the sentence took into account all relevant factors, and the sentence was within an appropriate range.

Parker J stated at [33]:

‘Every person has a right to feel safe in their house and the appellant had violated the security and safety of the victim and also violated her personally. He had terrorised her for what must have been hours in her own home. In her view his behaviour appeared to have been deliberately designed to inflict the maximum amount of terror.’

Counsel for the appellant referred to two other cases concerning home invasions (*R v Siviour* [2016] SASCFC 51 and *R v Stephen John Forbes* DCCRM 15-1418 and 15-340). Parker J emphasised that conduct giving rise to charges of trespass and kidnapping may be extremely varied, and therefore the length of reasonable sentences may differ ([58]). His Honour considered that the appellant's sexual offending against a former domestic partner was an aggravating factor not present in *Siviour* and *Forbes* ([59]). His Honour held that the sentencing judge balanced the appellant's lack of criminal history, expression of remorse and strong work history, against the serious nature of the offending and the enormous impact on the victim ([62]).