

***Lang v Police* [2019] SASC 97 (7 June 2019) – South Australian Supreme Court**

‘Community protection’ – ‘Condign punishment’ – ‘Damaging property’ – ‘Domestic relationship’ – ‘General deterrence’ – ‘Manifestly excessive--assault police’ – ‘Physical violence and harm’ – ‘Step child in family - past domestic and family violence’

Charges: 2 x aggravated assault, 1 x contravening a term of an intervention order, 1 x property damage

Case type: Appeal against sentence

Facts: The offending occurred in the context of a domestic relationship which was in the process of ending ([5]). At the relevant time, the appellant was subject to an intervention order ([11]). The appellant was living with his former domestic partner and her daughter (the protected person under that order). One count of aggravated assault involved the appellant punching his former domestic partner with a clenched fist to her left shoulder in the presence of her daughter ([8]). The police were called to the house. The second count of aggravated assault involved the appellant punching the attending Sergeant numerous times, one of which was described as ‘an unusual two-handed punch delivered in a jabbing manner’. The property damage occurred when the Sergeant’s glasses were broken as a result of the altercation between the appellant and himself ([10]). The Magistrate found that the appellant’s behaviour amounted to a breach of the intervention order, as he intimidated the daughter by assaulting her mother and the Sergeant in her presence, abusing her and conducting himself in a violent and abusive manner ([11]).

At trial, the Magistrate noted the appellant’s personal circumstances at [13], referring to his age, his previous marriage, and his employment history. His character references indicated that he was a hardworking, honest person who made a positive contribution to his community ([14]). The appellant had a prior conviction for assault of a police officer for which he was ordered to perform 200 hours of community service within 10 months ([15]). The Magistrate did not refer to the circumstances that led to the making of the intervention order ([17]). In his view, specific and general deterrence were significant sentencing principles ([18]). His Honour also ‘correctly observed’ that the law is required to protect police officers when performing their duties, as well as domestic partners ([19]). Consequently, the Magistrate imposed convictions on all counts and sentenced the appellant to 6 months’ imprisonment ([20]).

Issue: The appellant appealed against his sentence on 2 grounds, namely, 1) that the Magistrate failed to have regard to the appellant’s lack of antecedents, age, community work, good character and the interests of justice in sentencing the appellant; and 2) that the sentence of 6 months’ imprisonment was manifestly excessive.

Held: Hinton J allowed the appeal in part. His Honour considered each ground separately, and placed reliance on relevant case law and statistics from the New South Wales Bureau of Crime Statistics and Research. His Honour noted that the first ground of appeal was essentially a contention that the appellant's lack of antecedents, age, community work, and good character should have attracted a weight that resulted in a lesser sentence, or resulted in the sentence imposed being suspended in part or in whole ([21]). Referring to *House v The King* and *R v Lutze*, his Honour concluded that the submissions made in support of the first appeal ground should be treated as forming part of the submission in support of the second appeal ground ([24]).

As to the second appeal ground, his Honour found that the offending was 'particularly serious' and that the Magistrate correctly referred to the court's duty to protect vulnerable people from domestic violence ([29]). His Honour cited *R v Saunders* for the proposition that intervention orders and bail conditions can prevent acts of domestic violence, and that the violation of such orders and conditions can have profound consequences for the victim's sense of safety and security. Hinton J observed 'the effectiveness of intervention orders as a means of protecting members of the community will be undermined if the courts do not respond appropriately to their breach' ([33]).

Hinton J did not find the sentence of 6 months' imprisonment to be manifestly excessive per se. The appellant did not provide any explanation for his conduct or express remorse or contrition, and mitigating circumstances were absent. Although he is an intelligent person, his prior involvement with the courts and police should have been a clear reminder that such violent, abusive conduct towards his family and police is not tolerated ([40]). The appellant's prospects of rehabilitation were good, as he generally lived a 'good and productive life' and would likely continue to do so upon his release ([41]).

His Honour, however, found the requirement that 'he serve the entirety of the 6 month sentence so as to punish, to deter specifically and generally and to provide the protection' to be manifestly excessive. The Magistrate's approach was not reasonably open, having regard to the appellant's personal circumstances and, in particular, his age, antecedents, previous good character, work history and prospects of rehabilitation ([43]-[44]). The Magistrate appeared to focus on condign punishment to the exclusion of rehabilitation, and overlooked the appellant's likely response to supervision in the community for an extended period, which would have provided greater protection for the community ([44]).

In summary, the appeal was allowed, but to the limited extent of directing, pursuant to s 96(4) of the Sentencing Act 2017 (SA), that the appellant serve 16 weeks of his 6-month sentence in prison and suspend the remainder of the sentence on condition that he 1) enter into a good behaviour bond for 18 months; 2) be subject to supervision by a Community Corrections Officer; and 3) attend any counselling, treatment and therapeutic programs that deal with anger management and/or domestic violence as directed and deemed appropriate by his Community Corrections Officer ([45]).