

***Johnstone v Police* [2008] SASC 357 (17 December 2008) – South Australia Supreme Court**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘Aggravated assault’ – ‘Domestic discipline’ – ‘Offences against children’ – ‘Physical violence and harm’ – ‘Programs for perpetrators’ – ‘Sentencing’

Charge/s: Aggravated Assault (aggravating factor – that the offence was committed knowing the victim of the offence was their child)

Appeal Type: Appeal against sentence.

Facts: The appellant plead guilty and was convicted for the aggravated assault of his son. The appellant inflicted a substantial blow on the child, which left bruising and finger marks on his leg. However, he did not require any hospital treatment. It occurred in the context of the appellant attempting to discipline his son. The appellant’s criminal history included a prior conviction for an assault in a domestic setting. He was sentenced to six months’ imprisonment, fully suspended upon entering into a good behaviour bond for two years with conditions that he be under the supervision of a Community Corrections Officer and that he undertake counselling for drug issues, anger management and domestic violence issues.

Issue/s: One issue concerned whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was upheld and the sentence was reduced to three months’ imprisonment, fully suspended with the same bond conditions as fixed by the Magistrate. While acknowledging the appellant’s criminal history, Nyland J found that this was an isolated incident in the context of the appellant attempting to discipline his son, and was not intended to cause any injury. As such, while the sentence was excessive, the Court agreed with the Magistrate that a sentence of imprisonment was appropriate – ‘the court must make it clear, not only to the appellant but to others who might be like-minded, that violence of any kind to a child will not be tolerated’ (see at [28]).