

***Healy v Police* [2020] SASC 40 (19 March 2020) – South Australia Supreme Court**

‘Appeal against sentence’ – ‘General deterrence outweighed personal circumstances’ – ‘Good behaviour bond’ – ‘Intervention order’ – ‘Physical violence and harm’ – ‘Property settlement’

Charges: Aggravated assault x 1

Case type: Appeal against sentence

Facts: The appellant man pleaded guilty to one count of aggravated assault upon his wife (complainant), with whom he was now separated. There was some variance about the facts. The prosecution alleged that the appellant and complainant were experiencing domestic difficulties. The complainant came into their bedroom, looking for her mobile phone. On the prosecution case, the appellant pushed her to the dresser and moved her face in the direction of her phone. Such conduct was clearly against her will and involved force ([4]-[5]).

The sentencing Magistrate regarded the offending as ‘out of character’ and unlikely to be repeated but was concerned about general deterrence for this type of behaviour, which involved violence towards female partners. He placed less reliance on personal deterrence and considered that the recording of a conviction could potentially affect the appellant’s future employment. Nevertheless, he recorded a conviction on the basis of general deterrence ([7]), and sentenced the appellant to a \$200 good behaviour bond for a period of 18 months.

Issue: The appellant appealed on the basis that the sentencing Magistrate erred in recording a conviction and did not consider the appellant’s personal circumstances, including his low risk of re-offending, the impact of a conviction on his employment and the background of the offending ([8]-[9]).

Held: The appeal was dismissed. The appellant’s personal circumstances were noted at [6]. He had no criminal history, had already spent 9 hours in custody, and was employed as an electrician. The appellant and his wife no longer lived together and Family Court proceedings in relation to their property were finalised. Further, there had been no contact between the parties as a result of an intervention order.

The Court dismissed the appeal as no error could be demonstrated. The sentencing Magistrate considered all matters relevant to the appellant’s personal circumstances and was entitled to approach the matter by considering that general deterrence outweighed those matters. He was also entitled to be concerned about the prevalence and nature of domestic violence.