

***Siropoulos v Police* [2019] SASC 127 (19 July 2019) – South Australian Supreme Court**

‘Appeal against sentence’ – ‘Conditions’ – ‘Domestic relationship’ – ‘General deterrence’ – ‘Good behaviour bond’ – ‘Manifestly excessive’ – ‘People affected by substance misuse’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Risk of re-offending’ – ‘Step child in family’

Charges: 1 x assault causing harm

Case type: Appeal against sentence

Facts: The appellant was convicted of assault causing harm after having repeatedly punched the victim in the face, in the presence of her twin daughters from a previous relationship ([14]). The appellant and victim had been in a relationship for approximately 9 years. The relationship was marred by allegations of infidelity made by the appellant, and ‘he felt betrayed and became very angry’ upon discovering that the victim had regularly contacted another man ([13]). The victim’s injuries were extensive ([16]), and she told the Court in her Victim Impact Statement that ‘she was upset that the offending occurred unprovoked in her and her children’s home’ ([18]).

The appellant was sentenced to 14 months’ imprisonment, which was reduced to a prison term of 8 months and 2 weeks as a result of his early guilty plea. The sentence was partially suspended, allowing the appellant’s release after serving 4 months imprisonment upon him entering into a good behaviour bond for 2 years ([2]). The conditions of the bond are noted at [3], and included the requirements that he does not leave South Australia unless given permission by his Community Corrections Officer for specific purposes, and that he attend any programs and appointments as directed.

Issue: The appellant appealed against the sentence on the grounds that it was manifestly excessive and that it was manifestly unreasonable to not wholly suspend the prison sentence. He also appealed the condition of the partially suspended sentence bond requiring him not to leave South Australia without permission.

Held: Kourakis CJ noted the appellant's personal circumstances at [19]-[27]. He was aged 47 at the time of the offending, worked in the fishing industry, suffered a lengthy period of depression after his father's death, had numerous previous convictions of driving offences, and consumed an excessive amount of alcohol, particularly after his father's death and to numb his emotions during hostile relationships. Although the appellant has not consumed alcohol in over 3 years, he reported weekly use of cannabis ([23]). His mother was dependant on him and he also had a brother who suffers from schizophrenia ([20]). The appellant experienced anxiety and low self-esteem, as well as health issues. His psychologist opined that he exhibited dysfunctional personality traits, and experienced self-doubt and feelings of inadequacy ([25]). According to a violence risk assessment, the appellant was identified as likely to pose a Moderate-High risk of re-offending ([26]).

Having regard to the relative importance of general deterrence, Kourakis CJ held that the length of the prison sentence was not manifestly excessive. The appellant had reoffended despite the leniency that had been previously shown to him, and the victim's physical injuries were very serious. At [35], his Honour stated that '[p]ersonal and general deterrence must be given substantial relative weight in sentencing for assaults committed by men against women with whom they are, or have been, in a relationship, particularly when in a jealous rage'. The length of both the notional starting point and the actual prison term was well within the permissible range.

Kourakis CJ also found that the Magistrate's decision to partially suspend the sentence fell within the proper exercise of the sentencing decision ([36]), and that the Magistrate considered all relevant matters ([38]). It was not unreasonable for the Magistrate to conclude that the appellant's sentencing would be optimised by a combination of both punishment and deterrence effected by imprisonment for 4 months and rehabilitation over an 18-month period ([40]).

Kourakis CJ allowed the appeal only to the extent of removing the condition of the bond requiring the appellant to not leave South Australia unless given permission by his Community Corrections Officer, as such a condition was unreasonable. The appellant's home was in Melbourne, where his dependent mother resided and his brother received treatment for his mental illness. His Honour found that 'Australia is one nation and there is much movement between the south east corner of [South Australia] and Victoria'. His Honour also considered that there was 'no real connection between the condition that he obtain treatment and counselling and the obligation to obtain permission.' The appellant should be entitled to 'come and go from his own home, to help his mother as and when he sees fit, and to fish in Victorian waters without first obtaining permission' ([42]).