

***McCormack v The Queen* [2000] WASCA 139 (25 May 2000) – Western Australia Supreme Court (Court of Appeal)**

‘Deterrence’ – ‘Evidence’ – ‘Following, harassing, monitoring’ – ‘Grievous bodily harm with intent’ – ‘Intent’ – ‘Mitigating factors’ – ‘mental illness’ – ‘Physical violence and harm’ – ‘Relationship evidence’ – ‘Sentencing’

Charge/s: Grievous bodily harm with intent, attempted murder.

Appeal Type: Appeal against conviction and application for leave to appeal against sentence.

Facts: The appellant and his wife began conversing together with a man online. After some time, the appellant’s wife’s conversations with this man became ‘more flirty and intimate’ and eventually his wife agreed to stop using the internet. She said goodbye to this man and she refused to tell her husband what they discussed in this conversation. The next day, after attempting to discuss the issue with his wife, he stabbed her in the upper back while she was in bed either asleep or attempting to sleep. He then stabbed her again as she attempted to flee. He then unsuccessfully attempted to commit suicide. The appellant was found not guilty of attempted murder but guilty of grievous bodily harm with intent and was sentenced to 8 years’ imprisonment with parole eligibility.

Issue/s: Some of the issues concerned –

1. Whether the trial judge erred in instructing the jury that they could use evidence of the relationship between the appellant and his wife in the months leading up to the attack for the purposes of determining intention.
2. Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed.

1. The appellant submitted that the judge had misdirected the jury in allowing them to use evidence of disagreements between the appellant and his wife about her use of the internet and the breakdown of their relationship to infer the presence of intent. Kennedy J (with whom Pidgeon and Ipp JJ agreed) rejected this argument and held that the relationship was clearly admissible evidence which the jury could take into account in considering the appellant’s intention when he attacked his wife (see at [19]).
2. The sentencing judge took into account various mitigating factors including the appellant’s high degree of emotional distress arising from his childhood which left him with a ‘dependent personality disorder, chronic depression and anxiety’. The sentencing judge also took into account the victim impact statement, which described the devastating effect of the attack on the appellant’s wife and children. The sentencing judge also correctly noted the need for personal and general deterrence in domestic violence cases and that no form of domestic violence is acceptable, especially when it includes the use of a weapon. Kennedy J (Pidgeon J and Ipp J agreeing) held that although the sentence imposed was high,

it was within the range of the sentencing discretion and correctly weighed the mitigating factors (see at [27]) and the need for general deterrence.