

## ***The State of Western Australia v Smith* [2016] WASCA 153 (31 August 2016) – Western Australia Supreme Court (Court of Appeal)**

‘Aggravated grievous bodily harm’ – ‘Aggravating factor’ – ‘Cruelty to animal’ – ‘Defensive injury’ – ‘Physical violence and harm’

Charge/s: Aggravated grievous bodily harm, aggravated unlawful wounding, assaulting a public officer, cruelty to animal.

Appeal Type: Crown appeal against sentence.

Facts: The State appealed against a total effective sentence of 2 years and 2 months imprisonment imposed on the respondent in respect of a number of offences. The most significant offences occurred on 5 August 2015 while the respondent was subject to a suspended imprisonment order. The respondent attacked his former female de facto partner and a police officer using a claw hammer. He pleaded guilty to unlawful wounding and causing grievous bodily harm. He also pleaded guilty to assaulting a public officer and cruelty to the officer’s police dog.

Issue/s: One of the grounds of appeal was that the sentence imposed for grievous bodily harm and unlawful wounding was manifestly inadequate.

Decision and Reasoning: The appeal was allowed. Buss J (Mazza JA agreeing) held that the sentence of six months imprisonment imposed for the unlawful wounding offence was manifestly inadequate. This was in light of a number of factors including: the maximum penalty (7 years imprisonment); the seriousness of the offending (including the vulnerability of the victim – his former de facto partner); the general pattern of sentencing for offences of this kind; the importance of appropriate punishment and personal and general deterrence; the respondent’s unfavourable personal circumstances and antecedents (including a prior history of family violence offences); and all mitigating factors (see [27]-[32]).

Buss J also held that 18 months imprisonment for grievous bodily harm was also manifestly inadequate in light of the seriousness of the offending (especially the injuries the victim sustained in trying to defend herself and the fact that the respondent was significantly larger and more powerful than the victim) and all other relevant factors (see [39]-[40]).

In a minority judgment, Mitchell JA also upheld the appeal. This was in light of a number of factors including that His Honour found that the respondent’s offending was a serious example of grievous bodily harm. It was particularly significant that the injury sustained by the victim was a defensive wound, the level of violence was high, the victim did not provoke the attack and she was no threat to the respondent. Mitchell JA also noted that it was a significant aggravating factor that the offence occurred in a family and domestic

relationship (see [95]-[96]).