

## ***Silva v The State of Western Australia* [2013] WASCA 278 (4 December 2013) – Western Australia Supreme Court (Court of Appeal)**

‘Deterrence’ – ‘Following, harassing, monitoring’ – ‘Murder’ – ‘Physical violence and harm’ – ‘Sentencing’

Charge/s: Murder.

Appeal Type: Appeal against sentence.

Facts: The appellant’s marriage to the deceased was marred by ongoing arguments. There had been prior minor assaults. The appellant then discovered the deceased was having an affair. The appellant became obsessed about the deceased’s fidelity, was jealous of her friendships with work colleagues and he demanded that she resign from her employment, which she refused. The appellant became aware that the deceased remained friends with the man with whom she had an affair. Before her death, the deceased took leave from work and the appellant monitored her phone calls and prohibited her from returning to work. His unhappiness with the deceased was increased because of her failure to participate in the family’s morning prayer ritual. The appellant then killed the deceased in the living room by hitting her on the right side of a head on at least three occasions with a hammer that he had bought that morning. Mitigating factors included the appellant’s early plea of guilty and good character. He was sentenced to life imprisonment with a 17-year non-parole period.

Issue/s: Whether the non-parole period was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. Buss JA (with whom Mazza JA agreed) found that the seriousness of the offence was demonstrated by (among other things), the brutality and repetitive nature of the attack, the appellant’s intent to kill the deceased, the fact the appellant confronted the deceased when she was alone and vulnerable and the history of domestic violence inflicted by the appellant on the deceased (see further at [40]). The Court upheld the following statement by the sentencing judge in relation to general deterrence –

*'The law is clear that disputes between partners, no matter how emotionally hurtful, must be resolved peacefully. People must understand that marriage is not a licence to treat a spouse as a chattel and violence in the course of a marriage breakdown will be met with deterrent sentences. It is obvious that the minimum term must recognise the high value that the Western Australian community places on a person's life and a person's right to live without violence from their partner. Domestic violence continues to be a significant cause of violent death and serious injury in our community. The courts must impose sentences which continue to reflect the community's abhorrence and intolerance of such offending, particularly where it results in the death of the victim' (see at [42]).*