

***Tunney v The State of Western Australia* [2013] WASCA 286 (17 December 2013) – Western Australia Supreme Court (Court of Appeal)**

‘Aggravated assault occasioning bodily harm’ – ‘Aggravated burglary’ – ‘Breach of bail’ – ‘Breach of police order’ – ‘Damaging property’ – ‘Deterrence’ – ‘Emotional and psychological abuse’ – ‘Following, harassing, monitoring’ – ‘Physical violence and harm’ – ‘Trespass’ – ‘Wilfully and unlawful destroying or damaging property’

Charge/s: Aggravated assault occasioning bodily harm, wilfully and unlawfully destroying or damaging property, aggravated burglary, breach of a police order, trespass, breach of bail.

Appeal Type: Appeal against sentence.

Facts: The appellant was in an ‘on and off’ domestic relationship with the victim for about three years. The aggravated assault charge involved the appellant standing over the victim who was on the floor of their living room. The appellant kicked her in the groin, which caused her to cry out and curl up into the foetal position in agony. The damaging property offence occurred the next day. While driving, the victim noticed the appellant was following her in his truck. He called her and sent her text messages as she drove to a shopping centre. She entered the shopping centre. When she returned to her car she found that two tyres had been deflated.

Some months later, the victim arrived home to find the appellant inside. He began shouting at her. She fled and the appellant took a bag containing her passport and other belongings. He was issued with a 72-hour police order. He then breached that order the next day by making numerous phone calls to the victim at her work. The trespass charge involved the appellant entering the victim’s home using a set of keys that he had cut without the victim’s knowledge. The aggravated burglary charge occurred when the victim arrived home, again finding the appellant in the house. He attempted to kiss her and refused to leave. At one point, the appellant threw her onto a bed, ripped a necklace from her neck, struck her to the face and hit her on the head with his knees. Later the appellant entered into a bail undertaking in relation to these matters, which he breached by contacting the victim and asked her to look after him because he was sick. He insisted that she take him back to her home, where he remained until he was taken into custody. The total effective sentence imposed was 3 years 8 months’ imprisonment.

Issue/s: One of the issues concerned whether the sentence infringed the totality principle.

Decision and Reasoning: The appeal was dismissed. The Court found that notwithstanding the appellant's 'favourable' antecedents, he was not truly remorseful, and considerations of personal and general deterrence remain important. The offending was sustained and designed to intimidate the victim physically and psychologically. He was not deterred from further offending notwithstanding the imposition of police orders and bail conditions. As such, the Court held that the total effective sentence did bear a proper relationship to the overall criminality involved, having regard to all the relevant circumstances. A substantial period of imprisonment was required.