

***Papas v The State of Western Australia* [2011] WASCA 3 (10 January 2011) – Western Australia Supreme Court (Court of Appeal)**

‘Aggravated burglary’ – ‘Assault occasioning bodily harm’ – ‘Breach of protective bail conditions’ – ‘Criminal damage’ – ‘Damaging property’ – ‘Deterrence’ – ‘Exposing a child’ – ‘Mitigating factors’ – ‘Obstructing a public officer’ – ‘People affected by substance abuse’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Separation’

Charge/s: Aggravated burglary (two counts), assault occasioning bodily harm, criminal damage, obstructing a public officer, breaching protective bail.

Appeal Type: Appeal against sentence.

Facts: The complainant was the father of the appellant’s former partner. The appellant attended the complainant’s house and obtained entry. He was confronted by the complainant who demanded he leave. A verbal altercation occurred, at which point the appellant’s former partner came to the aid of the complainant. The appellant then grabbed her by the hand and bent her middle finger which caused it to fracture. One another day, the appellant again obtained entry to the house, this time by throwing a pot plant through a door. His former partner was inside and she barricaded herself and her 2-year-old son in a bedroom with a chest of drawers. The appellant rammed the door with a table which enabled him to unlock the door. She managed to flee the bedroom and the appellant was detained by a neighbour until police arrived. The appellant suffered from depression and anxiety and was intoxicated on both occasions. He had no relevant criminal history. A total effective sentence of 12 months’ imprisonment was imposed.

Issue/s:

1. Whether the trial judge erred in failing to find that the appellant’s depression and anxiety reduced his moral culpability and the need for general deterrence.
2. Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed.

1. McLure P (with whom Mazza J agreed) held that the appellant’s mental impairment did not impair his functioning to the extent that his culpability or the need for general deterrence should be reduced. Instead, the offending can be attributed to his level of intoxication.
2. The Court held that the seriousness of this offending was heightened by the extent of the actual and threatened violence committed by the appellant, and as McLure P (Mazza J agreeing) noted – ‘The seriousness of the offending is not reduced because it occurred in the context of a failed or failing domestic relationship. It is necessary to protect actual and potential victims of domestic violence’ (see at [16]). The mitigating factors, such as the appellant’s remorse and good character were given sufficient

weight by the sentencing judge.