

***The State of Western Australia v Radovic* 2020 WASCA 46 (8 April 2020) – Western Australia Supreme Court (Court of Appeal)**

‘Attempted murder’ – ‘Physical violence and harm’ – ‘Protection order’ – ‘Separation’ – ‘Threats to kill’

Charges: Possessing an offensive weapon in circumstances likely to cause fear to other persons x1;
Attempted murder x1;

Appeal type: State appeal against sentence

Grounds: The sentence for the charge of attempted murder was manifestly inadequate having regard to:

- > The maximum penalty for the offence;
 - > The person the respondent intended to kill was a police officer;
 - > The respondent knew the victim was a police officer before he struck;
 - > The respondent came to the premises armed with a sword which he knew was sharp and which he was adept at using;
 - > The respondent used the sword to strike the victim in a vulnerable area which was likely to result in fatal injury;
 - > The offence was committed in front of witnesses; and
 - > The offence was committed in breach of the respondent’s VRO and community based order;
- > The serious nature of the offence and the circumstances in which it was committed, including:
 - > The serious impact of the offence on the victim and his family;
 - > The personal circumstances of the respondent;
 - > The importance of personal deterrence considering the respondent’s criminal history; and
 - > The importance of general deterrence and punishment for offences of this nature.

Facts: The respondent man pleaded guilty to the charge of possessing an offensive weapon and was convicted following trial of the charge of attempted murder. He was sentenced to 4 years’ imprisonment for possession of an offensive weapon and 9 year’s imprisonment for attempted murder. The sentences were backdated to the day of offending and ordered to be served concurrently, resulting in a total effective sentence of 9 years’ imprisonment. The ground of appeal relates to the sentence imposed on the charge of attempted murder.

At the time of offending the respondent was the subject of a violence restraining order ('VRO') which prevented the respondent from contact or communicating with his former wife (Radovic) or any of their three children. The day before the offending, the respondent made an application seeking to vary the terms of the VRO. The former wife was opposed to the changes and the matter was adjourned. The next day, the respondent attended the workplace of Radovic's brother armed with a samurai sword. Radovic's brother was not there at the time. Later that day, the respondent went to the unit Radovic's brother and sister shared, banged on the door and shouted threats to kill them. The Respondent did not know that Radovic and her children lived in the unit adjacent to her siblings'. Some of the children witnessed the display and police were called to the scene. The officers arrived in a marked vehicle and attended Radovic's unit to take the children's statements. Radovic arrived shortly after.

The Respondent returned to the unit while police were still there with the samurai sword and began to brandish his sword in a manner that caused fear to those present, constituting the first charge, while threatening to kill them. A witnesses alerted the police and the officers left the unit and approached the respondent. The respondent rushed towards one of the officers with the sword raised, prompting the officer to discharge his taser at the respondent, to no effect. The respondent then swung the sword and forcefully struck the officer's head. This action formed the basis of the attempted murder charge and caused two lacerations. The respondent was eventually subdued and arrested.

Judgment: The sentence for attempted murder was manifestly inadequate and the respondent was re-sentenced to 13 years' imprisonment.

None of the previous cases concerned truly comparable offending [60]. There is no tariff or usual sentencing range for a charge of attempted murder, sentences are variable and while all offences are very serious each case will turn on its own facts [61]. This was a very serious example of offending [62]. The Court found the fact that the fact that the victim was a police officer executing his duties was a "profoundly aggravating feature" [64]. They noted that "[p]olice officers are often required to place their safety at risk in carrying out their duty to protect the public. It is vital that the courts impose significant custodial sentences upon offenders who intentionally cause serious injury to police officers acting in the course of their duties" [63]. Personal and general deterrence were thought to have particular importance especially in light of the respondent's criminal history [66]. In light of the limited mitigation available to the respondent, it was found that the sentence was "substantially less than the sentence open on a proper exercise of the sentencing discretion" [72] because of the seriousness of the offence and aggravating features.