

Beins v The State of Western Australia [No 2] [2014] WASCA 54 (12 March 2014) – Western Australia Supreme Court (Court of Appeal)

‘Aggravated burglary’ – ‘Drug and alcohol programs’ – ‘Parity’ – ‘Physical violence and harm’ – ‘Women’

Charge/s: Aggravated burglary.

Appeal type: Appeal against sentence.

Facts: The female appellant had been in an off and on relationship with the male complainant. Prior to this, the appellant had been in a relationship with her co-offender. The appellant and the complainant had been arguing and the argument became violent. The appellant contacted her co-offender and they formed a plan to assault the complainant. They went to the complainant’s premises and the appellant’s co-offender struck the complainant with a pole approximately 15 times. Amongst other findings, the sentencing judge found that the appellant was not the victim of entrenched domestic violence and could not claim any degree of diminished responsibility. Her co-offender had a history of severe domestic violence against him, his brother and their mother. The appellant was sentenced to 2 years and 8 months’ immediate imprisonment. Her co-offender was sentenced to 2 years and 8 months’ imprisonment, suspended for 2 years.

Issue/s: One of the issues was whether the sentence breached the parity principle.

Decision and Reasoning: The appeal was allowed. McLure P held that the totality of sentencing considerations could not justify the imposition of different types of sentence. The offenders were broadly comparable in terms of their personal circumstances, involvement with the police, and remorse and rehabilitation. McLure P noted that the sentencing judge cast the appellant as a ‘siren’ who manipulated and knowingly misused her ‘childlike’ co-offender and found that this was not justified by the evidence. The sentencing judge incorrectly concluded that the co-offender’s rehabilitation required the incarceration of the appellant (See [48]). Pullin JA also upheld the appeal but for different reasons. His Honour found that the existence of extraordinary disparity in sentences breached the parity principle (See [82]). Mazza JA also provided his own reasons. Mazza JA noted that the disparity in sentences could not be rationally explained by differences in the circumstances of offending or of the offenders. The offences were not markedly different, their personal circumstances were similar, and both were amenable to programmatic intervention for their therapeutic needs (See [113]-[116]).