

***The State of Western Australia v TLP* [2019] WASCA 66 (24 April 2019) – Western Australia Supreme Court (Court of Appeal)**

‘Manifestly inadequate’ – ‘Older people’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Sexual and reproductive abuse’ – ‘Totality principle’

Charges: Aggravated grievous bodily harm x 1; Aggravated assault occasioning bodily harm x 1; Aggravated sexual penetration without consent x 6; Attempted aggravated sexual penetration without consent x 1.

Appeal type: Prosecution appeal against sentence.

Facts: The respondent attended his grandparents’ house. He attacked his grandmother and his half-sister. He punched his grandmother and threw her to the ground. He then attempted and committed acts of sexual penetration on his half-sister including inserting his finger and penis into her vagina and anus performing cunnilingus on her ([34]-[56]).

A circumstance of aggravation was that his relationship with both victims was a family and domestic relationship. In relation to his half-sister, another aggravating circumstance was that he threatened to kill her. In relation to his grandmother, another aggravating circumstance was that she was over the age of 60 ([27]).

The respondent pleaded guilty and was sentenced to a total effective sentence of 6 years 6 months’ imprisonment ([1]-[2]).

Issues: Whether the sentence was manifestly inadequate; whether the total effective sentence infringed the first limb of the totality principle by not reflecting the overall criminality.

Decision and reasoning: The appeal was allowed. All three Justices agreed that the respondent should be resentenced to 12 years’ imprisonment but differed on the appropriate individual sentences.

Mazza and Beech JJA identified the mitigating factors identified by the trial judge (including his pleas of guilty, remorse, prior good record, relatively young age, negative familial experiences and previous bullying) entitled the respondent to some mitigation of his sentence ([93]). However, the individual sentences for each offence were judged to be manifestly inadequate having regard to the maximum sentences and the seriousness of the conduct. Their Honours would have imposed a total sentence of 15 years, but after having a ‘last look’ to ensure that the total sentence measures the respondent’s overall criminality, determined that a sentence of 12 years was appropriate ([115]-[116]).

Buss P would have imposed a total effective sentence of 12 years' imprisonment without requiring a 'last look'. His Honour imposed slightly different sentences for each individual count compared to Mazza and Beech JJA ([20]-[21]).