

***Riddoch v Chiera* [2020] WASC 114 (7 April 2020) – Western Australia Supreme Court**

‘Aggravating factor’ – ‘Children’ – ‘Manifestly excessive’ – ‘Miscarriage of justice’ – ‘Non-fatal strangulation’ – ‘Physical violence and harm’

Charges: Aggravated assault causing bodily harm x1;

Appeal type: Application for leave to appeal against sentence

Grounds:

1. The magistrate's conduct during the sentencing hearing did not allow defence counsel to make full submissions as to the appellant's personal circumstances and the nature of the relationship between the appellant and complainant, which hindrance resulted in a miscarriage of the sentencing exercise; and
2. The type of sentence imposed was manifestly excessive as it was reasonably open to His Honour, in all the circumstances, to suspend the term of imprisonment imposed. Particulars:
 1. The plea of guilty and the relevance of the discount for that plea;
 2. The appellant's antecedents;
 3. Sentences imposed in, broadly, comparable cases;
 4. The prosecution's concession as to the type of sentence open to the Court.
3. The learned Magistrate erred when he failed to adequately consider the imposition of a type of sentence less than one of immediate imprisonment.

Facts: The male appellant and female victim had been in a domestic relationship for six years and had a child together. At the time of offending, the victim and appellant were arguing in a car while the child was in the backseat. During the argument, the victim pulled over to the side of the road out of fear of the appellant and ask him to get out of the car. The appellant then punched the victim to the upper-left arm and grabbed her and squeezed her arm. He then "punched the victim to her left breast and the left side of her stomach". The appellant continued to assault the victim until he hit her head against a window and strangled her until she could not breathe.

The appellant entered a plea of guilty and was sentenced to 14 months' imprisonment. The magistrate declined to suspend the term.

Judgment: The first ground was dismissed; as the Magistrate was not discourteous and did not prevent the plea from being made, the contention was without foundation. The second ground of appeal was also dismissed; it was noted that the sentencing judge "carefully reviewed all relevant sentencing factors" and only after doing so correctly concluded that imprisonment was the only appropriate punishment [37-8].

The third ground was also dismissed. McGrath J found the domestic relationship and presence of young children to be aggravating factors and thought the 15% discount afforded for the guilty plea by the sentencing judge was appropriate. After placing minimal weight on the offender's personal circumstances, such as his age, as mitigating factors, the Court concluded that the sentence was not manifestly excessive.