

***Bryant v Witts* [2018] WASC 194 (27 June 2018) – Western Australia Supreme Court**

‘Animal abuse’ – ‘Disclosure’ – ‘Manifestly excessive’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Totality’

Charges: Aggravated unlawful assault x 2; Aggravated unlawful assault causing bodily harm x 4; Cruelty to an animal causing it unnecessary harm x 1.

Appeal type: Appeal against sentence.

Facts: The appellant and complainant were in a de facto relationship. On multiple occasions over 2 years, the appellant punched or struck the complainant, causing a broken arm ([25]) and a split lip ([26]). On the occasions where he struck her with a hairbrush and mobile phone, her head split open and she required stitches ([18]-[21], [24]). The appellant also kicked her small dog, causing it to become paralysed and die ([29]). Her children were present on most of the occasions. The assaults were unprovoked. While the police were sometimes called by witnesses, the complainant did not feel safe enough to tell the police about all the assaults until she had left the relationship ([31]).

The appellant pleaded guilty and was sentenced to 22 months’ imprisonment ([48]).

Issues: Whether the sentence was manifestly excessive; whether the sentence infringed the first limb of the totality principle; whether a suspended sentence should have been imposed.

Decision and reasoning: The appeal was dismissed.

Derrick J found that the sentence was not manifestly excessive. His Honour stated that “over an extended period of time the appellant engaged in a serious course of criminal conduct comprised of subjecting the vulnerable complainant to a number of significant acts of domestic violence. The fact that the offences were committed in a domestic setting increases the seriousness of what the appellant did” ([73]). Factors such as the appellant’s relative youth and relatively limited prior record provided some mitigatory value.

For largely the same reasons, Derrick J considered that imposing an immediate term of imprisonment, compared to a suspended sentence, was not outside the range of the magistrate’s sentencing discretion ([94]).