

***Morgan v Kazandzis* [2010] WASC 377 (10 December 2010) – Western Australia Supreme Court**

‘Aboriginal and Torres Strait Islander people’ – ‘Aggravated assault causing bodily harm’ – ‘Deterrence’ – ‘People living in regional, rural and remote communities’ – ‘Physical violence and harm’ – ‘Pregnancy’ – ‘Sentencing’ – ‘Suspended sentence’ – ‘Vulnerable groups’ – ‘Women’

Charge/s: Aggravated assault causing bodily harm (x 2).

Appeal type: Appeals against conviction and sentence.

Facts: One of the appeals concerned two occasions where the appellant, an aboriginal man, unlawfully assaulted the victim who he was in a family and domestic relationship with. They were living at the Oombulgurri Aboriginal Community, and the victim was pregnant to the appellant. On both occasions, the victim, bleeding, with multiple injuries to her face and head, sought assistance from the police at the police facility. The victim told the police she was afraid of the appellant and wanted to get away from Oombulgurri. The police arranged for an aeroplane to take the victim to another centre for a time. The appellant was sentenced to 8 months’ imprisonment and 15 months’ imprisonment on each charge respectively. In light of the nature and seriousness of the offences, the Magistrate determined an immediate sentence of imprisonment was required.

Issue/s: Some of the grounds of appeal included –

The learned magistrate erred by failing to suspend the terms of imprisonment imposed, when:

1. the learned magistrate failed to give consideration to whether the terms ought to be suspended; and
2. a suspension of the sentence was open in all of the circumstances.

Decision and Reasoning: The appeal was dismissed. These were serious offences committed by the appellant, who had two recent convictions of aggravated assault causing bodily harm. The violent conduct towards the victim was repeated less than five weeks later and the victim had a well-founded fear of the appellant. The victim was vulnerable as she was much younger than the appellant, had been in a relationship with him and was pregnant (see at [69], [72]).

'Violent treatment of women in this fashion cannot be tolerated anywhere in the State, but it is of particular importance that in isolated communities such as Oombulgurri that the punishment of an offender who commits such offences in a short space of time should be such as to demonstrate to all members of the community that that conduct is unlawful and that effective punishment will be imposed in order to deter the general community from the use of violence. Specific deterrence of the individual offender was, in this case, also a necessary and essential ingredient of the sentence' [72].

A longer term of imprisonment was warranted on the second offence because it was more serious in that it was a repetition of the same unlawful conduct, and it was an unrelated offence.