

***Clarke v Cantatore* [2019] WASC 385 (28 October 2019) – Western Australia Supreme Court**

‘Aggravating factor’ – ‘Assault’ – ‘Manifestly excessive’ – ‘Mitigating factors’ – ‘Strangulation’ – ‘Totality’

Charges: Aggravated administration of a noxious thing to another person x 1; Aggravated common assault.

Proceedings: Appeal against sentences

Facts: The appellant and the complainant had, at the time of the allegations, been in a relationship for approximately five years and were engaged to be married. The appellant verbally abused the complainant and threw her onto the bed. The complainant managed to kick the appellant off her and the appellant threw items around the room. The complainant’s attempt to use pepper spray to keep the appellant away only angered him further. He picked the complainant up by her neck and jaw before throwing her back a couple of metres into the fridge. The accused hit the complainant against the fridge again, causing her to drop to the ground in pain. When she stood up again the accused sprayed the back of her neck with pepper spray.

The appellant was sentenced to 12 months imprisonment and was made eligible for parole.

Issues: The appellant appealed on grounds the sentences were manifestly excessive and that the magistrate erred in ordering the sentences be served cumulatively and that the total sentences should not be suspended.

Decision and reasoning: Jenkins J held that the magistrate had correctly balanced the appellant’s personal circumstances including the domestic relationship with the complainant and repeated significant force against any aggravating factors and that the sentences were therefore not manifestly excessive. The total effective sentence was held to be plainly unjust given the offending was close in time and in one incident, the appellant had good prospects of rehabilitation, and had never been sentenced to imprisonment or convicted of violent offending previously. There was no error in choosing not to suspend the sentences.