

***Hill v Tomkin* [2021] WASC 54 (3 March 2021) – Western Australia Supreme Court**

‘Act causing bodily harm’ – ‘Appeal against sentence’ – ‘Glassing’ – ‘Imprisonment’

Charges: Act causing bodily harm x 1.

Proceedings: Appeal against sentence.

Facts: The male appellant and the female victim had been in a domestic relationship but had lived separately for 7 months. The appellant and the victim had a verbal argument through the glass window pane of a side door. The appellant punched the glass window pane, causing the glass to break and strike the victim on her face, resulting in injuries requiring medical attention including stitches. The appellant pleaded guilty on the first morning of trial and was sentenced to 10 months immediate imprisonment, with eligibility for parole.

Grounds of appeal:

1. The magistrate erred in the calculation of the discount afforded for the guilty plea.
2. The magistrate erred in failing to take into account any factor in mitigation other than the guilty plea.
3. The magistrate erred in imposing a sentence of imprisonment when a sentence of last resort was not warranted.
4. The magistrate erred in imposing a sentence of immediate imprisonment when it was not inappropriate to suspend the sentence.

Held: Appeal was upheld on grounds 3 and 4, and the appellant re-sentenced by way of a community based order.

The injuries sustained by the complainant were severe but was not comparable to “glassing” distinguishing: “[a] glassing involves an intentional breaking of a glass into a person’s face with the obvious potential for very severe injury. The appellant’s act involved the appellant breaking a window in a momentary loss of control with no intention of causing harm to the complainant.”

Ground 4: The term of immediate imprisonment was manifestly excessive having regard to sentences imposed in other cases and factors mitigating the seriousness of the offence (absence of weapons and intention to cause injuries suffered, impulsivity and lack of foresight of the consequences, no threats of violence, and isolated nature of the act). The appellant was also remorseful, had no history of violence or violent offending and had positive antecedents. Further, on Ground 3: It was not open to impose a sentence of imprisonment. A term of imprisonment greater than 6 months would not have been appropriate.