

***Masoud v Dhaliwal* [2019] WASC 56 (1 March 2019) – Western Australia Supreme Court**

‘Fines’ – ‘Physical violence and harm’ – ‘Security officer’ – ‘Sentencing’ – ‘Strangulation’

Charges: Assault in circumstances of aggravation x 1.

Case type: Appeal against sentence.

Facts: The appellant was convicted on his plea of one offence of assault in circumstances of aggravation. The relevant circumstance of aggravation was that the appellant and the victim, the appellant's wife, were in a family relationship. The assault comprised of the appellant hitting the victim, grabbing her by the throat, and holding her around five seconds until other family members intervened ([6]). At the time of the offence, the appellant held a security officer's licence and worked as a security officer. The licence was suspended and he resigned from his job before the sentencing hearing ([7]). Having regard to the seriousness of the offence and mitigating factors, the magistrate imposed a fine of \$1200 and made a spent conviction order ([1]).

Issues: The appellant appealed the sentence. Submissions included that:

- > The appellant's counsel did not make submissions about the amount of the fine or the possible impact of a fine on the appellant's ability to continue to hold a security licence, and therefore the magistrate did not consider such implications.
- > The sentence would lead to a loss of employment, hardship and a loss of financial security.
- > The imposition of a fine under \$500 would be within the range of an appropriate exercise of the sentencing discretion given the circumstances of the offence and relevant mitigating factors (appellant's age and evident remorse, absence of any prior offending, the fact that the appellant is the main financial provider for his family).

Decision and reasoning: The Court was not satisfied that there was any substantial miscarriage of justice and dismissed the appeal. At [29]-[32], Tottle J noted numerous issues with the appellant's case. First, as the respondent submitted, reducing the fine imposed on the appellant under \$500 would undermine the operation of the *Security and Related Activities (Control) Act 1996 (WA)*. His Honour accepted that this was a case involving a nexus between the offending and the appellant's occupation as a security officer. Security officers must often exhibit self-restraint in the performance of their duties. The offending was contrary to this. Second, there was force to the respondent's submission that the appellant's argument does not rest on the proposition that the fine should be reduced because of the extra-curial punishment constituted by the financial hardship resulting from the loss of the appellant's security officer's licence, but that the fine should be reduced to avoid that extra-curial punishment with the result that the appellant is doubly advantaged in relation to mitigation. Third, the maximum penalty for the offence of common assault in circumstances of aggravation is a \$36,000 fine or 3 years' imprisonment, or both. A fine of less than \$500 would not constitute an appropriate sentence. Although the offence was considered to be 'towards the lower end of the scale', there is no single correct sentence for any offence, and his Honour held that a fine of less than \$500 would not be adequate given the seriousness of the offending.