

Persistent Family Violence

s 300 *Criminal Code*

From 1 January 2021

Glossary:

agg	aggravated
att	attempted
conc	concurrent
cum	cumulative
ct	count
PO	prescribed offence
EFP	eligible for parole
imp	imprisonment
PG	plead guilty
PNG	plead not guilty
susp	suspended
TES	total effective sentence

Office of the Director of Public Prosecutions

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
1.	<p><i>The State of Western Australia v Winch</i></p> <p>[2024] WASCA 79</p> <p>Delivered 03/07/2024</p>	<p>40–48 yrs at time offending. 52 yrs at time sentencing.</p> <p>Convicted after PG (12% discount).</p> <p>Criminal history; AOBH against current victim; numerous breaches of VRO; common assault and breach of VRO against another woman from a previous relationship.</p> <p>Uneventful upbringing; supportive family.</p> <p>Left school after yr 11 and began working as an electrician; stable employment history.</p> <p>One child from previous relationship.</p> <p>Diagnosed ADHD; alcohol dependent; diagnosed depression; previous suicide attempts.</p>	<p>1 x Persistent family violence.</p> <p>The respondent and the victim were married. The respondent is 10 yrs older than the victim. Following the increase in the respondent’s alcohol consumption, the respondent became verbally and physically abusive towards the victim. Most of the POs happened at night when the respondent was drunk.</p> <p><u>PO 1: Assault</u></p> <p>The respondent threw a meat pie at the victim, which struck her in the face.</p> <p><u>PO 2: Threat to kill</u></p> <p>Whilst in the kitchen, the respondent became angry and verbally abused the victim. The respondent took a knife and put it to the victim’s throat and threatened to kill her.</p> <p><u>PO 3: Threat to harm and crim damage</u></p> <p>The respondent and the victim were in their lounge room. The respondent verbally abused the victim and spat in her face, then smashed some photographs and ornaments. He then retrieved an axe from the shed. The respondent threatened to cut the victim’s foot off and, before moving outside, smashed the victim’s phone.</p> <p><u>PO 4: Threat to kill</u></p> <p>After the respondent became enraged, he retrieved a speargun from the shed and pointed it at the victim as she lay in the bed. The respondent said he would kill the victim then himself.</p> <p><u>PO 5: AOBH</u></p> <p>After the respondent became enraged, the respondent grabbed the victim by</p>	<p>2 yrs 3 mths imp.</p> <p>EFP.</p> <p>The sentencing judge found the respondent had taken no real steps to change his behaviour over the 8 yrs of offending.</p> <p>The violence used by the respondent was found to be ‘towards the lower end of the scale in terms of physical violence and physical outcomes for the victim.’</p> <p>The offending had negatively impacted the victim’s life; the respondent’s behaviour had eroded her trust in others; experienced feelings of guilt; continues to live in fear of the respondent.</p> <p>The sentencing judge found there was a degree of remorse from the respondent, and he had made some efforts to deal with his alcohol abuse.</p> <p>The sentencing judge found the respondent’s time in custody would be more onerous on account of his detoxification from alcohol than if he had been in the community.</p>	<p>Appeal allowed.</p> <p>Appeal concerned length of sentence.</p> <p>Resentenced: 5 yrs 8 mths imp.</p> <p>EFP.</p> <p>At [88] ‘having regard to the terms of s 300 and its relevant context, the following (non-exhaustive) matters emerge that, depending on the facts and circumstances of each individual case, will ordinarily be relevant in assessing the seriousness of an offence of persistently engaging in family violence.’</p> <p>At [89] firstly, the nature of the charge means that the victim ‘is likely to have reposed a level of trust in the offender. Further, the victim is also likely to be emotionally or financially dependent’ on the offender.</p> <p>At [90] ‘secondly, because the “acts of family violence” that are required for a person to have persistently engaged in family violence are those acts that would otherwise constitute a “prescribed offence”, it is necessary to observe that such offences do not include more serious offences of violence that can only be dealt with on indictment ... Further ... not all of the prescribed offences referred to in s 299(1) are [acts of personal violence].’</p> <p>At [92] ‘this means that the gravity of an offence contrary to s 300 will not necessarily depend on and may not be informed to any significant extent by, the seriousness of any physical injuries suffered by the victim...Further, in assessing the seriousness of an offence contrary to s 300 of the Code, it must be appreciated that the gravity of any physical injuries is not the only litmus test; it will often be very important to also play close attention to any psychological injury and emotional trauma suffered.’</p> <p>At [93] ‘thirdly, as is the case with offences contrary to s 321A of the Code, an offender is to be sentenced and punished for the whole course of criminal conduct ... this does not mean that an appropriate sentence for the purpose of an offence contrary to s 300 falls to be determined by reference to any individual or total effective sentences that might otherwise have been imposed had the various “acts of family violence” been the subject of individual charges.’</p> <p>At [94] ‘fourthly ... each case must be determined according to its particular facts and circumstances, and by having regard to all relevant sentencing factors.’</p>

			<p>her right arm, which resulted in bruising.</p> <p><u>PO 6: Act likely to endanger and assault</u></p> <p>Once again, the respondent was drunk and angry. He told the victim if she ever left him, there would be murders. The respondent put both his hands arounds the victim's throat and shook her for about five seconds. The respondent again threatened to kill the victim, then poked her eye with his finger.</p> <p><u>PO 7: Act likely to endanger and assault</u></p> <p>The respondent struck the victim on the arm with a sandal, then shook her violently.</p>		<p>At [95] 'fifthly, the maximum penalty ... reflects the serious view that Parliament has taken of such conduct.'</p> <p>At [96] 'sixthly, the following matters will often be relevant to the court's assessment of the seriousness of the offence': the period of time which the offending took place; the frequency of the offending; the nature of the offending; the psychological impact of the offending; the physical impacts; the degree of dependence of the victim upon the offender; and the extent to which the offending trapped the victim in the relationship. The 'above list is not intended to be exhaustive ...'</p> <p>At [98] '... as the sentencing judge appeared to accept, the many specific instances [of offending] ... were just representative of a "much broader picture and relationship that involved abuse, and physical and verbal violence, and threat, and aggression".'</p> <p>At [105] 'in this case, the victim impact statement very clearly illustrates the pernicious effect of sustained domestic violence in general and, more specifically, the enduring and deleterious effect the respondent's behaviour had had on the [victim].</p> <p>At [116] 'in our view ... the sentence was so inadequate such that it must be inferred that the sentencing judge made a material error in the exercise of her sentencing discretion. A significantly higher sentence should have been imposed.'</p>
--	--	--	---	--	---

Office of the Director of Public Prosecutions