

***O'Brien v R* [2015] ACTCA 47 (15 May 2015) – Australian Capital Territory Court of Appeal**

‘Assault occasioning bodily harm’ – ‘Double jeopardy- sentencing’ – ‘Exposing a child’ – ‘Perverting the course of justice’ – ‘Physical violence and harm’ – ‘Risk factor- strangulation’ – ‘Sentence cumulation’ – ‘Sentencing’ – ‘Systems abuse’ – ‘Trafficking in cocaine’

Charge/s: Trafficking in cocaine, assault occasioning actual bodily harm (two counts), forcible confinement, perverting the course of justice. Grievous bodily harm.

Appeal Type: Appeal against sentence.

Facts: The sentence imposed at first instance related to three distinct instances of criminality: the drug offence, the domestic violence offences and the perverting the course of justice offence. The domestic violence offences involved the appellant severely beating his then domestic partner which caused horrific injuries. He also choked her in the presence of his young son, restrained her from leaving their premises and forced her to take prescription sedatives so as to prevent her from seeking medical treatment which would reveal the assaults. He detained her for 24 years. The perverting the course of justice offence involved the appellant encouraging his (by then former) partner not to attend court in relation to the domestic violence charges and encouraging her to produce false evidence about her psychological frame of mind. The aggregate sentence imposed was 12 years and 11 months’ imprisonment with a non-parole period of 8 years and 4 months.

Issue/s: Whether the aggregate sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. The appellant submitted that the domestic violence sentences should not have been made cumulative on the sentences for the drug offences. He also submitted that the sentencing judge did not apply the totality principle. The Court held that while the aggregate sentence could be considered by some to be somewhat harsh, it was not unreasonable and was appropriate having regard to all the circumstances. There was no overlap in the three instances of criminality, nor could it be said that the three incidents arose from a single episode or course of conduct, ‘such that the criminality involved in one of the incidents was subsumed or comprehended in the others’ (see at [29]). The sentencing judge did take accumulation, concurrency and totality into account and did impose a degree of concurrency.