***McLaughlin v R* [2013] NSWCCA 152 (3 July 2013) – New South Wales Court of Criminal Appeal**

'Assault occasioning actual bodily harm' – 'Common assault' – 'Exposing children' – 'Imprisonment' – 'Physical violence and harm' – 'Protection orders'

Charge/s: Assault occasioning actual bodily harm x 2, common assault.

Appeal Type: Appeal against sentence.

Facts: The female complainant and her young son moved from Tasmania to Victoria to live with the male applicant, her then de facto partner. At the time of offence, the complainant was vulnerable and isolated in that she was unemployed, cut off from friends and family, and suffered from a physical disability to her leg. Count 1 occurred when the applicant and complainant were arguing and the applicant dragged her off the bed, causing her to hit her jaw and bite her lip. Count 2 occurred when the applicant and complainant were again arguing and the applicant hit her to the side of her head near her eye. Count 3 occurred when they were arguing about an apprehended violence order (AVO) that had been made for the protection of the complainant and, as the complainant walked into her son's room, the applicant grabbed her by the hair and throat. The applicant was sentenced to a total head sentence of two years and four months imprisonment with a non-parole period of four months.

Issue/s:

1. The sentencing judge erred when she found that the offences were aggravated by the fact that they took place in the generalised presence of a child under the age of 18 years.
2. The sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. Error was demonstrated with ground one of the appeal. While there was evidence for Count 3 on which it might have been open to the sentencing judge to find that the child must have realised what was happening (even though he did not see the events), Her Honour did not make such a finding. Accordingly, the sentencing judge erred in taking into account that the offence was committed in the presence of the child (See [31]). Further, for Counts 1 and 2 there was no direct evidence of the presence of a child (See [32]). However, Button J declined to intervene with the sentence on appeal (See [54]-[55]).

The second ground of appeal was dismissed. At [48]-[49] Button J noted that:

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‘The approach of this Court to men who assault vulnerable women is well established and need not be elaborated upon by me: see R v Edigarov [2001] NSWCCA 436, R v Dunn [2004] NSWCCA 41, and R v Hamid [2006] NSWCCA 302’.

‘If an offender sees fit repeatedly to visit violence upon a woman in breach of a bond and an apprehended violence order imposed months before with regard to the same behaviour and the same victim, he should expect to be imprisoned, and not for an insubstantial period’.