

***R v Eckermann* [2013] NSWCCA 188 (15 August 2013) – New South Wales Court of Criminal Appeal**

‘Aggravated break and enter and commit serious indictable offence’ – ‘Damaging property’ – ‘Denunciation’ – ‘Deterrence’ – ‘Exposing children’ – ‘Physical violence and harm’ – ‘Protection of the community’ – ‘Sentencing’ – ‘Suspended sentences’ – ‘Where the offender is known to the victim’

Charge/s: Aggravated break and enter and commit serious indictable offence (assault occasioning actual bodily harm).

Appeal Type: Crown appeal against sentence.

Facts: After being in a domestic relationship for nine years and having two children together, the respondent and the complainant separated due to domestic violence perpetrated by the respondent. The complainant was asleep when she was woken by the respondent breaking into the property. He was shouting and looking for the complainant’s new partner. This woke and scared the children. He started throttling the complainant and then punched her in the face. The complainant managed to call the police. In sentencing, the judge characterised the offending as being towards the lower end of the spectrum. This was in light of a number of factors including that the respondent was not a stranger to the complainant (and therefore the offence would have been less frightening than a home invasion by a stranger) and that the respondent’s primary motivation was to protect his children from danger from the complainant’s new partner. The respondent was sentenced to two years imprisonment, suspended conditional upon entering into a good behaviour bond.

Issue/s: Some of the grounds of appeal were –

1. The sentencing judge erred in characterising the objective seriousness of the offending as being ‘towards the lower end of the spectrum’.
2. The sentence was manifestly inadequate.

Decision and Reasoning: The appeal was allowed and the respondent re-sentenced to imprisonment with a non-parole period of 14 months and a balance term of 10 months. First, Price J held that the sentencing judge erred in characterising the objective seriousness of the offence as at the lower end. Home invasion offences do not become less serious by virtue of a prior domestic relationship between an offender and the victim. Rather, the objective gravity of the crime is to be assessed on the facts of the case and here it was not open to the sentencing judge to conclude that the offence would have been less frightening than a home invasion by a stranger (See [35]-[36]). Further, very little weight could be given to the respondent's motivation to protect his children. His actions terrified the complainant and the children. The offending was aggravated by the fact that it was committed in the presence of the children (See [37]-[45]). Accordingly, the offending was towards the middle of the range for such offences (See [46]).

Second, notwithstanding the respondent's subjective circumstances including his love for his children, his employment, and good prospects of rehabilitation, a suspended sentence was manifestly inadequate. As per Price J at [54]-[55]:

'This was a serious offence of violence by the respondent. When women (and men) enter into a new domestic relationship, they are entitled to do so without the threat of violence from a former partner. This is particularly so when there are children of the prior relationship as acts of violence towards a parent particularly when committed in the children's presence have the potential to impact severely upon their well-being and future development.

This Court has emphasised the seriousness with which violent attacks in domestic settings must be treated: Hiron v R [2007] NSWCCA 336. Specific and general deterrence, denunciation of the offending conduct and the protection of the community are important factors in sentencing a domestic violence offender: R v Dunn [2004] NSWCCA 41; R v Edigarov [2001] NSWCCA 436; R v Hamid [2006] NSWCCA 302. In my view, the respondent's subjective circumstances could not justify the suspension of the sentence. A full-time sentence of imprisonment was called for'.