

***Morgan v R* [2016] NSWCCA 298 (16 December 2016) – New South Wales Court of Criminal Appeal**

‘Exposing children to domestic and family violence’ – ‘People who are gay, lesbian, bisexual, transgender, intersex and queer’ – ‘Physical violence and harm’ – ‘Women’

Charges: Specially aggravated break, enter and commit an indictable offence, namely reckless wounding x 1.

Appeal type: Appeal against sentence.

Facts: The applicant and complainant (both women) lived together with the victim’s two children and had been in an intimate relationship ([4]). The victim and applicant argued, which escalated into a physical confrontation. The victim barricaded herself in a bedroom and picked up her infant child. The applicant broke into the room and stabbed the victim in the back. The applicant continued to chase, hit and choke the victim, and the victim sustained stab wounds to her buttock, arms, wrist and neck ([5]-[8]). The applicant pleaded guilty and was sentenced to 6 years and 3 months’ imprisonment, with a non-parole period of 2 years and 9 months.

Issues: Whether the sentence is manifestly excessive.

Decision and Reasoning: The appeal was dismissed. The Court of Appeal (Ward JA, Bellew J and Hidden AJ) had regard to the applicant’s subjective circumstances, such as the fact that she had experienced domestic violence and sexual abuse as a child, and had been diagnosed with anxiety, depression and borderline personality disorder ([10]-[12]). The Court of Appeal found that the trial judge had adequate regard to the subjective circumstances proffered by the applicant ([27]). The victim did not sustain any serious injuries ([16]).

The Court of Appeal remarked that the charge of break and enter was unusual in this case, given that the applicant broke an internal door. This fact made it impossible to find comparable cases ([22], [26]).