

***R v Hamid* [2006] NSWCCA 302 (20 September 2006) – New South Wales Court of Criminal Appeal**

‘Assault occasioning bodily harm’ – ‘Denunciation’ – ‘General deterrence’ – ‘Multiple victims’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Protection of the community’ – ‘Repeat domestic violence offenders’ – ‘Sentencing’ – ‘Specific deterrence’ – ‘Vulnerability of the victim’ – ‘Wounding’

Charge/s: Assault x 2, assault occasioning actual bodily harm x 5, detaining without consent and with intent to obtain an advantage (to avoid detection for assaulting her), malicious wounding.

Appeal Type: Crown appeal against sentence.

Facts: The total effective sentence included a non-parole period of two years and six months, with the balance of the term lasting two years. The offending involved prolonged and serious violence committed against three women with whom the respondent was either married or in a relationship over an eight year period.

Issue/s: The sentence was manifestly inadequate.

Decision and Reasoning: The appeal was allowed. Johnson J at [65] - [88] provided a very useful summary of the relevant principles, particularly of relevant Court of Criminal Appeal authority. This authority has placed great emphasis on general deterrence, due to the prevalence of domestic violence, as well as the vulnerability of victims and breaches of trust involved. Specific deterrence and denunciation is also important.

Johnson J also quoted Wood CJ in *R v Edigarov* [2001] NSWCCA 436 who stated –

‘As this Court has confirmed in Glen NSWCCA 19 December 1994, Ross NSWCCA 20 November 1996, Rowe (1996) 89 A Crim R 467, Fahda (1999) NSWCCA 267 and Powell(2000) NSWCCA 108, violent attacks in domestic settings must be treated with real seriousness. Regrettably, that form of conduct involves aggression by men who are physically stronger than their victims and who are often in a position economically, or otherwise, to enforce their silence and their acceptance of such conduct. In truth such conduct is brutal, cowardly and inexcusable, and the Courts have a duty to ensure that it is adequately punished, and that sentences are handed out which have a strong element of personal and general deterrence.’

Her Honour went on at [77] –

‘These judicial statements are complemented by criminological research concerning domestic violence. An adequate account of domestic violence should recognise that it typically involves the exercise of power and control over the victim, is commonly recurrent, may escalate over time, may affect a number of people beyond the primary target (including children, other family members and supporters of the victim) and that it contributes to the subordination of women; domestic violence typically involves the violation of trust by someone with whom the victim shares, or has shared, an intimate relationship; the offender may no longer need to resort to violence in order to instil fear and control: J Stubbs, “Restorative Justice, Domestic Violence and Family Violence”, Australian Domestic and Family Violence Clearing House, Issues Paper 9, 2004, pp 6-7.

Her Honour then commented specifically on the relevant considerations when sentencing — *‘ In sentencing a domestic violence offender, and in particular a repeat domestic violence offender, specific and general deterrence are important factors, together with the requirement of powerful denunciation by the community of such conduct and the need for protection of the community. Recognition of the harm done to the victim and the community as a result of crimes of domestic violence is important’* at [86].

‘This is not to say that promotion of rehabilitation of the offender is not an important factor. It remains necessary to provide individualised justice in the circumstances of the particular sentencing decision. Nevertheless, the factors to which reference has been made above assume particular significance in the case of a domestic violence offender who has committed a series of offences over an extended period of time against different victims’ at [88].

While the respondent did have a mental illness, Her Honour found that it was not such as to reduce his moral culpability, or reduce the need for general deterrence, as he was aware of the gravity of the offending. In applying these principles to the facts, Johnson J found that the sentences imposed at trial were manifestly inadequate and did not reflect the ‘objective criminality’ that was involved. The respondent showed minimal remorse, was seeking to ‘justify his crimes’ and had a criminal record of assaults and breaches of apprehended domestic violence orders. The respondent was re-sentenced accordingly (See at [152]).