

## ***Hiron v The Queen* [2007] NSWCCA 336 (7 December 2007) – New South Wales Court of Criminal Appeal**

‘Assault occasioning actual bodily harm’ – ‘Denunciation’ – ‘Deterrence’ – ‘False imprisonment’ – ‘Physical violence and harm’ – ‘Pregnant women’ – ‘Protection of the community’ – ‘Sentencing’

Charge/s: Assault occasioning actual bodily harm x 4, false imprisonment, resist arrest x 2.

Appeal Type: Appeal against sentence.

Facts: The female victim of the assaults and false imprisonment was the applicant’s de facto partner, who was pregnant at the time. The applicant was sentenced to a total effective sentence of imprisonment comprising of a non-parole period of four years with a balance of term of two years.

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

- > The sentencing judge erred in not having proper regard to the totality principle.
- > The sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. Price J noted at [32] that:

*‘Offences for violent attacks in domestic settings, this Court has emphasised, must be treated with real seriousness. Important factors in sentencing a domestic violence offender are specific and general deterrence, denunciation of the offending conduct and protection of the community: see for example *R v Edigarov*; *R v Dunn*; and *R v Hamid*’.*

Price J then quoted from Wood CJ in *Edigarov* at [41] where it was said that:

*‘...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.’*

Here, the sentence could not be said to be manifestly excessive or that the sentencing judge erred in his application of the totality principle. Each of the four offences of assault occasioning actual bodily harm involved separate episodes of violence towards the victim. After each occasion, the applicant had the opportunity to stop. The false imprisonment was serious and distressing to the victim. Some offences involved the use of a weapon and the offences involved gratuitous cruelty. The offences were committed while the applicant was on conditional liberty. The offender abused a position of trust, as the partner of the victim and the father of their children. The victim was vulnerable in that she was a pregnant female of much smaller build than the applicant (See [34]-[39]).