

***R v Dunn* [2004] NSWCCA 41 (23 February 2004) – New South Wales Court of Criminal Appeal**

‘Assault occasioning actual bodily harm’ – ‘Breach of an apprehended violence order’ – ‘Break and entering a dwelling armed with an offensive weapon’ – ‘Denunciation’ – ‘Deterrence’ – ‘Exposing children’ – ‘Manifestly inadequate’ – ‘Physical violence and harm’ – ‘Purposes of sentencing’ – ‘Sentencing’

Charge/s: Breaking and entering a dwelling armed with an offensive weapon, assault occasioning actual bodily harm, breach of an apprehended domestic violence order.

Appeal Type: Crown appeal against sentence.

Facts: The de facto relationship between the male respondent and the female complainant had ended in mid-2000. In 2001, the respondent was convicted of assault occasioning actual bodily harm and placed on a bond for two years. Six months later, the poorly disguised respondent crashed his car into the complainant’s car, which she was driving with her two children. The respondent then tried to force the complainant out of her car and punched her in the nose, eye and head. In 2002, the respondent broke into the complainant’s house and attacked her with a Stanley knife. The complainant’s new partner intervened. The respondent was sentenced to three years and nine months imprisonment with a non-parole period of one year and nine months.

Issue/s: The sentence was manifestly inadequate.

Decision and Reasoning: The appeal was allowed. Adams J stated at [47]:

‘Crimes involving domestic violence have two important characteristics which differentiate them from many other crimes of violence: firstly, the offender usually believes that, in a real sense, what they do is justified, even that they are the true victim; and, secondly, the continued estrangement requires continued threat. These elements also usually mean that the victim never feels truly safe. Unlike the casual robbery, where the victim is often simply in the wrong place at the wrong time, the victim of a domestic violence offence is personally targeted. To my mind these considerations emphasise not only the need for general and personal deterrence but also of denunciation in cases of this kind’.

He found that the sentencing judge did not give adequate weight to the need for deterrence and denunciation. Further, the extent of injury committed by the offender is an important factor in assessing the appropriate measure of punishment and the sentence here did not adequately reflect the pain and suffering the respondent caused. Finally, the sentencing judge erred in imposing wholly concurrent sentences because there were two distinct and separate instances of violence against the complainant and her new partner. The respondent was re-sentenced to four years and six months imprisonment.