

## ***Vaiusu v The Queen* [2017] NSWCCA 71 (5 April 2017) – New South Wales Court of Criminal Appeal**

‘Appeal against sentence’ – ‘Ex tempore judgement’ – ‘Impact on children’ – ‘Imprisonment’ – ‘Manifestly excessive’ – ‘Perpetrator victim of domestic violence’ – ‘Subjective circumstances’

Charges: Wounding with intent to do grievous bodily harm x 1.

Appeal type: Appeal against sentence.

Facts: The victim was the appellant’s brother in law. The victim had hit the appellant’s sister, apparently accidentally, in a scuffle outside a nightclub. The appellant’s sister told her that the victim had hit her, but she did not tell her that it was an accident. The appellant followed the victim to a train station and stabbed him in the neck with a broken bottle ([7]).

The appellant pleaded guilty and was sentenced to 2 years and 3 months imprisonment with a non-parole period of 1 year and 2 months.

Issues: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. The appellant argued that the trial judge failed to take sufficient account of her background as a victim of domestic violence by her stepfather growing up ([23]). It was also submitted that the appellant was subject to domestic violence by her husband, whose death she was still mourning at the time of the offending ([24]). Further, the trial judge made no mention of the fact that her daughter would be left without a parent if the appellant was sentenced to imprisonment ([26]).

The Court of Appeal (Bathurst CJ, R A Hulme and Beech-Jones JJ) emphasised that a trial judge cannot carefully consider their remarks while delivering an ex tempore judgement. If a trial judge does not mention a particular factor, that does not mean that they have not had regard to it ([31]). Even though the trial judge did not specifically mention the factors raised by the appellant, it was evident that the trial judge adopted a sympathetic approach to sentencing while having regard to the maximum sentence and current sentencing practices ([36]-[38]).