***R v Lennon* [2003] SASC 337 (2 October 2003) – Supreme Court of South Australia**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

'Aboriginal and Torres Strait Islander people' – 'Mitigating factors' – 'Physical violence and harm' – 'Sentencing' – 'Unlawful and malicious wounding with intent to cause grievous bodily harm'

Charge/s: Unlawful and malicious wounding with intent to cause grievous bodily harm.

Appeal type: Application for leave to appeal against sentence.

Facts: The respondent, an Aboriginal man, was intoxicated and engaged in an argument with his de facto wife. He lost his temper and struck her on the head with the blade of a shovel which caused very serious injuries. He then threatened to break her legs, struck her on the knees with the shovel handle and struck her on the arm, which was already broken and in plaster. He had a relevant criminal history including offences of violence. He was sentenced to 18 months' imprisonment with a non-parole period of 10 months.

Issue/s: Whether the sentence was manifestly inadequate.

Decision and Reasoning: The appeal was upheld. Mitigating factors included the fact that the offence was committed on the spur of the moment while he was intoxicated and he was immediately remorseful (see at [9]). However, Doyle CJ (with whom Prior J and Vanstone J agreed) described the attack as 'brutal' and 'cowardly' (see at [10]). Doyle CJ then made the following comments at [12] –

'The court has said consistently that it must do what it can to protect women from violence by men. This applies just as much to violence within a domestic relationship as it does to violence in other situations. In cases like this the community expects, and protection of women requires, that the court should impose a sentence that is likely to deter the individual offender and to deter other potential offenders. The fact that the violence occurs on the spur of the moment is a relevant factor, but this is often true in the case of domestic violence. The impulsive nature of such offences is often offset by the fact that, as here, there is a pattern of violence within the particular relationship, or on the part of the particular offender. Mr Lennon's record makes it clear that he has not yet learned that violence towards women cannot be accepted.'

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As such, while there was no error in the primary judge's reasoning, the sentence was too low. It was not justified by the mitigating factors in the context of the objective seriousness of the crime and the respondent's criminal history. The respondent's Aboriginality was acknowledged but no significance of that factor was identified. The Court held that the head sentence should have been twice what was imposed. There was a need for the Court to re-sentence because the original punishment was, 'so inadequate as to shake confidence in the administration of justice' (see at [18]). The appellant was then re-sentenced to four years' imprisonment with a non-parole period of 20 months. While Doyle CJ was of the view that a longer non-parole period was warranted, this was not appropriate because the original non-parole date fixed by the trial judge was to expire within two weeks of the decision being handed down. To increase the non-parole period so close to this date would have been particularly harsh on the respondent.