

***The State of Western Australia v Naumoski* [2013] WASCA 215 (18 September 2013) – Western Australia Supreme Court (Court of Appeal)**

‘Aggravating factor’ – ‘Deterrence’ – ‘Grievous bodily harm with intent’ – ‘Mitigating factors’ – ‘Physical violence and harm’ – ‘Sentencing’

Charge/s: Grievous bodily harm with intent.

Appeal Type: Appeal against sentence.

Facts: The respondent and the victim were married and had a young daughter. Their relationship ended. When the respondent returned to the victim’s unit to retrieve his property, the victim called police due to his behaviour. He left before police arrived. He then returned to the unit. The victim again called police who issued the respondent with a 24-hour move-on notice. The following evening, the respondent entered the unit using his own key, confronted the victim, struck her on the top of her head, placed his hands around her neck then stabbed her multiple times. The victim managed to exit the unit while the respondent chased after her and continued to stab her in the back. The victim almost died and suffered extremely serious injuries and is disfigured for life. She lost the use of one hand and use of her thumb on the other hand and could no longer look after her daughter on her own. The mental effects were also severe – she became depressed, highly dependent on others, unemployed and ‘cannot stand the sight of herself’ (see at [11]). The appellant had a previous conviction for violence and the sentencing judge noted that he was intoxicated at the time of the offence and had a propensity for violence whilst intoxicated. He was sentenced to 5 years’ imprisonment and was made eligible for parole.

Issue/s: Whether the sentence was manifestly inadequate.

Decision and Reasoning: The appeal was upheld. McLure P (with whom Buss JA and Mazza JA agreed) noted that the offending was premeditated, with the respondent having waited more than an hour for the victim to return home. He acted ‘out of hate related to his wife’s attempt to take control of her own life’ (see at [21]). See in particular at [25]-[41] where McLure P provided summaries of all comparable cases. Her Honour described this offending as ‘high on the scale of seriousness just short of the worst category’, noting its premeditated nature, ferocity, the nature and extent of the harm and the tragic effect on the victim. A further aggravating factor was that the respondent intended not only to do her grievous bodily harm but to disfigure her body. This made the sentence manifestly inadequate notwithstanding the mitigating factors and the respondent was resentenced to 7 years’ imprisonment with no change of parole eligibility.

Her Honour discussed the prevalence of domestic violence and the fact that is often connected with conduct in a relationship that, ‘understandably generates high emotion, volatility and associated loss of control.’ Notwithstanding, the fact that violence occurs in a domestic relationship is not a mitigating factor (see at [43]). As to whether it would be an aggravating factor, her Honour stated at [41]– ‘*I am not persuaded that the sentencing subtleties are appropriately conveyed by characterising the domestic relationship (whether past, existing or anticipated) setting as itself aggravating the offending*’ and at [43], ‘*Deterrence is called for in relation to all offences involving serious violence, domestic and otherwise.*’