

***Hansen v The State of Western Australia* [2014] WASCA 229 (11 December 2014) – Supreme Court of Western Australia (Court of Appeal)**

‘Aboriginal and Torres Strait Islander people’ – ‘Assault causing bodily harm’ – ‘Exposing children’ – ‘Grievous bodily harm’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Totality’

Charge/s: Assault causing bodily harm, grievous bodily harm.

Appeal type: Application for an extension of time to appeal and appeal against sentence.

Facts: One of the victims, Ms Lee, was in a family and domestic relationship with the appellant, an Indigenous man. She had previously been in a relationship with the other victim, Mr Hill, and they had 2 children together. Count 1 related to an occasion where Ms Lee, Mr Hill and their children were out walking. The appellant, who had followed them, struck Mr Hill with a stick out of anger and jealousy. Mr Hill suffered bruising to his elbow, a fracture to the ulna bone, bruising to the back and loin, and a laceration and bleeding in and around the kidney. Count 3 occurred when the appellant and Ms Lee were in Ms Lee’s bedroom and he asked her for sex. She refused and the appellant punched her seven to ten times to her face with a closed fist. Ms Lee underwent surgery to repair a fractured eye socket and sustained ongoing psychological trauma. In sentencing, to accommodate the totality principle, His Honour reduced the individual sentence he would have imposed on each offence by six months. The total effective sentence was 6 years’ imprisonment.

Issue/s: The total effective sentence infringed the first limb of the totality principle namely, ‘the total effective sentence must bear a proper relationship to the overall criminality involved in all the offences, viewed in their entirety and having regard to the circumstances of the case, including those referable to the offender personally’ (See [22]).

Decision and Reasoning: The application for an extension of time within which to appeal was granted but the appeal was dismissed. The total effective sentence of 6 years’ imprisonment properly reflected the appellant’s overall criminality having regard to all the circumstances of the case (See [27]). These offences were serious examples of their type. The offences were ‘brutal, sustained and completely without justification’. The victims were defenceless and the injuries they sustained were significant. In count 1, the appellant used a weapon capable of causing serious harm. In count 3, the appellant beat his domestic partner who was in bed and therefore vulnerable. The sentencing judge was correct to emphasise the need for general deterrence. There was very little that could be said by way of mitigation (See [24]).