Stokes v Auckland **[2012] WASC 2 (10 January 2012) – Supreme Court of Western Australia**

'Aboriginal and Torres Strait Islander people' – 'Assault occasioning bodily harm' – 'Deterrence' – 'substance abuse ' – 'People living in regional, rural and remote communities' – 'Physical violence and harm' – 'Sentencing' – 'Victim'

Charge/s: Assault occasioning bodily harm.

Appeal Type: Appeal against conviction and sentence.

Facts: The appellant, (an Aboriginal man) engaged in an argument with his de facto partner. He punched her in the head multiple times until she fell over. He dragged her by the hair to a nearby tap to wash the blood off her. The appellant was very intoxicated at the time. He had a significant history of alcohol and drug abuse and violence including prior convictions for violent offences against the complainant. In fact, the offending was committed while he was subject to three suspended sentences relating to offences committed against the complainant. The complainant wished to continue her relationship with the appellant and at one stage indicated that she did not want to proceed with the charges. However, the appellant pleaded guilty at an early stage and was sentenced to 16 months' imprisonment. He was also re-sentenced for the suspended sentences which resulted in a total effective sentence of 22 months' imprisonment.

Issue/s: Some of the issues concerned –

1. Whether the plea of guilty was made under duress and did not reflect his acceptance of the facts alleged by the prosecution.
2. Whether the sentence of 16 months for the latest assault was manifestly excessive and whether the total effective sentence was disproportionate to the overall criminality of the offending.

Decision and Reasoning: The appeal against conviction and sentence was dismissed.

1. This argument was dismissed – see at [23]-[32].
2. Hall J accepted the Magistrate's conclusion with respect to the seriousness of the appellant's conduct. His Honour then noted that the attack was 'prolonged', instigated by the appellant and aggravated by the fact that it was committed notwithstanding previous court orders imposed for similar offending. This showed a disregard for the law and a need for a personal deterrent. Hall J noted that other than the early plea of guilty, there was little by way of mitigation. Furthermore, the fact that the appellant was intoxicated when the offence was committed was not mitigatory, as the appellant was 'acutely aware that alcohol was a risk factor in respect of his past offending behaviour' (see at [41]). In relation to the complainant's wishes for reconciliation, his Honour noted McLure P's remarks in *The State of Western Australia v Cheeseman* [2011] WASCA 15 (19 January 2011) and held that, 'An otherwise appropriate penalty should not be reduced on account of an expression of willingness on the part of the complainant, for whatever reason, to forgive the offender and continue a relationship with him' (see at [43]).

As such, the Court held that while the one-month sentence was at the higher end of the range for offences of this kind, it was within the Magistrate's discretion, having regard to the seriousness of the offence and the need for personal and general deterrence. In relation to totality, the Court held that the earlier offences were separate and unrelated to the latest assault. It was appropriate to activate these suspended sentences and orders of cumulation did not make the total effective sentence disproportionate to the overall criminality of the offending.