***Suksa-Ngacharoen v Regina* [2018] NSWCCA 142 (10 August 2018) – New South Wales Court of Criminal Appeal**

'Appeal against sentence' – 'Breach of protection order' – 'Concurrent sentences' – 'Physical violence and harm' – 'Sentencing'

Charges: Grievous bodily harm by the explosion of a substance x 1.

Appeal type: Appeal against sentence.

Facts: The applicant and the victim were in a relationship. In 2013, the applicant was charged with common assault and an apprehended domestic violence order ('ADVO') was imposed upon him. In 2014, the applicant doused the victim with methylated spirits and set her alight.

District Judge Syme imposed a sentence of 18 years' imprisonment with a non-parole period of 13 years and 3 months. The applicant was also sentenced to: 18 months' imprisonment for the charge of contravening an apprehended domestic violence order; seven months' imprisonment for breach of bond in relation to the charge of contravening an apprehended domestic violence order; and three months' imprisonment for breach of bond in relation to the charge of common assault.

Issues: Appeal against sentence on 7 grounds.

Decision and Reasoning: The appeal was allowed.

Leeming JA and Bellew J agreed with Wilson J's reasoning with respect to grounds 1-6. However, their Honours held that ground 7 (the sentence was manifestly excessive) was established. The applicant had participated in courses, had expressed remorse, had not used drugs in custody, had no other criminal records, and experienced language and cultural difficulties in custody owing to his Thai heritage. Whilst these factors did not detract from the objective seriousness of the offending, they suggested that there was an unarticulated error of principle on the part of the sentencing judge. Their Honours quashed the sentence and imposed a total sentence of 17 years imprisonment, with a non-parole period of 12 years.

Wilson J held that the appeal should be dismissed. Her Honour dismissed ground 4 (failure to properly assess the applicant's evidence of remorse) on the basis that the applicant had not made reparation and blamed his drug use for the commission of the crime. Accordingly, Wilson J considered that the applicant's expression of remorse was no more than 'the often ritual incantation', easily uttered, whether sincerely or otherwise ([116]).

Her Honour dismissed ground 6 (error by partly accumulating the sentence for the substantive offence on the related offence of contravene ADVO) on the basis that offences committed in breach of an ADVO and the offence of breaching an ADVO, involved separate and distinct criminality which warranted the imposition of distinct sentences for each offence ([131]). Wilson J said at [132]:

> *'The criminality of breaching an ADVO rests in the complete disregard for an order of a court, conduct which has the practical effect of undermining the authority of the courts, and preventing the courts from extending effective protection to persons at risk of harm from another. The legislative intent of the scheme for apprehended domestic violence orders is to permit a court to restrain the conduct of an individual who poses a risk to a person with whom he or she is or was in a domestic relationship… Conduct which involves deliberate disobedience of a court order must be treated as serious, and should ordinarily be separately punished from any offence that occurs at the same time, always having regard to the requirements of the totality principle as set out in Pearce v The Queen (1989) 194 CLR 610.'*

Her Honour disagreed with the majority with respect to appeal ground 7. The applicant's crime was extremely serious, and the consequences for the victim were devastating and long-term. The gravity of the crime warranted a stern sentence representing condign punishment. Accordingly, the sentence imposed was not manifestly excessive ([145]).