***Cherry v R* [2017] NSWCCA 150 (28 June 2017) – New South Wales Court of Criminal Appeal**

'Contravention of a domestic violence order' – 'Escalation of violence' – 'People affected by substance misuse' – 'Strangulation'

Charges: Assault occasioning actual bodily harm x 3; Assault x 4; Breaking and entering x 1; Contravening domestic violence order x 4.

Appeal type: Application for leave to appeal against sentence.

Facts: The applicant and complainant had been in a relationship since 2013 ([12]). The applicant committed a series of assaults, including striking the complainant with his hands ([16]) and car keys ([13]), touching her with a hot pipe used to smoke ice ([27]), and choking her, once until she was nearly unconscious ([14], [20], [25]). The applicant also entered the home of the complainant's friend, assaulted her and stole her mobile phone ([34]). The applicant pleaded guilty, and was sentenced to 6 years' imprisonment with a non-parole period of 4 years ([6]).

Issues: The applicant appealed on three grounds: first, that the judge erred in finding that the offending was in the mid-range of objective seriousness; second, that the sentence accorded insufficient weight to the prospects of rehabilitation; and third, that the sentence was manifestly excessive ([9]).

Decision and Reasoning: The appeal was dismissed.

Justice Johnson briefly dismissed the first and second grounds of appeal ([60, [68]). On the third ground, His Honour discussed the importance of general and specific deterrence and denunciation in domestic violence cases (see [74]-[80]).

His Honour observed: "It is correct to characterise the Applicant's course of conduct towards NR as one involving escalating violence. His act of choking NR in Count 4 had the potential for very grave consequences. Although not applicable to the Applicant in this case, it is noteworthy that in the second reading speech in support of the Crimes Amendment (Strangulation) Act 2014, which amended s.37 Crimes Act 1900, the Attorney General, Mr Hazzard, observed that strangulation "is prevalent in domestic violence incidents" (Hansard, Legislative Assembly, 7 May 2014)" [75].

He further noted: “In the context of domestic violence offences, the High Court has observed that it is a longstanding obligation of the State to vindicate the dignity of each victim of violence, to express the community’s disapproval of that offending and to afford such protection as can be afforded by the State to the vulnerable against repetition of violence: Munda v State of Western Australia (2013) 249 CLR 600; [2013] HCA 38 at 620 [54].” [79]

The applicant’s regular use of the drug Ice was a relevant factor but not a of itself a mitigating circumstance.[81]

This case concerned repeated offences of escalating violence, in breach of a domestic violence order ([80]). Having regard to these considerations, the sentence was not manifestly excessive ([83]).