***Ngatamariki v R* [2016] NSWCCA 155 (9 August 2016) – New South Wales Court of Criminal Appeal**

'Objective seriousness' – 'Physical violence and harm'

Note: On 25 September 2018 Sections 4A and 4B of the *Crimes (Sentencing Procedure) Act* were introduced imposing additional requirements in sentencing for domestic violence offences in NSW.

Charges: Grievous bodily harm x 2.

Case type Appeal against sentence.

Facts: The applicant was convicted of causing grievous bodily harm with intent to his partner (the victim), with whom he resided with their 2 children. He was intoxicated at the time of the offending and had a prior conviction for domestic violence towards the victim. He was sentenced to 5 years imprisonment with a non-parole period of 3 years.

Issue: The applicant sought leave to appeal on the grounds that the trial judge erred by having regard to his prior conviction in determining the objective seriousness of the offence, and that the sentence was manifestly excessive.

Held: The Court granted leave to appeal, but dismissed the appeal. The applicant's offending was extremely serious, and constituted a 'brutal and violent attack…on an innocent, and largely defenceless, victim'. The Court noted that the sentence imposed required a strong measure of general deterrence ([71]). The trial judge correctly took into account the fact that the offending occurred in the context of a domestic relationship ([72]). Denunciation of, and punishment for, 'brutal' and 'alcohol-fuelled' conduct in such circumstances is particularly apt ([73]).

Further, the trial judge was found not to have improperly used the applicant's prior convictions as a factor which aggravated the seriousness of his offending. The domestic relationship between the applicant and victim was relevant to determining the objective seriousness of the offending ([45]). In order to make a complaint of manifest excessiveness, the applicant must demonstrate that the sentence imposed was unreasonable or plainly unjust. The submissions and evidence did not establish that the sentence imposed fell into such a category. In light of the circumstances, the sentence was one that might be regarded as modest ([75]).