

***R v MacAdam-Kellie* [2001] NSWCCA 170 (9 May 2001) – New South Wales Court of Criminal Appeal**

‘Aggravating factor’ – ‘Attempted murder’ – ‘Breach of an apprehended domestic violence order’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Protection order’ – ‘Sentencing’

Charge/s: Attempted murder.

Appeal Type: Appeal against sentence.

Facts: The applicant and the victim had been married for 21 years before the victim left the family home and obtained an apprehended violence order. On the day of the offence, the victim was arriving at the Family Court accompanied by their four year old son when the applicant approached her and produced a knife, approximately 30 cm in length with a serrated edge blade. The victim fled but was chased by the applicant and almost fatally stabbed in the arm, back and stomach. The applicant was sentenced to 16 years imprisonment, with a non-parole period of 12 years. A psychiatric report tendered from Dr Nielssen diagnosed the applicant as suffering from a major depressive illness and a personality disorder.

Issue/s: One of the grounds of appeal was that the sentencing judge erred in failing to accept the findings of Dr Nielssen and in concluding that there was no evidence which established a link between the major depressive illness the applicant was suffering and the commission of the offence (See [51]).

Decision and Reasoning: The appeal was allowed. In light of the opinion of Dr Nielssen and fresh evidence adduced, there was a link between the illness suffered by the applicant and the offence (See [58]). James J also noted that the sentencing judge’s conclusions regarding the severity of the attack (particularly in light of the apprehended violence order) were entirely open to him. The attack was very severe and showed a degree of viciousness. The offence was committed in breach of an apprehended domestic violence order and this was a significant aggravating factor (See [37]-[38]).