DPP v Darcy-Shillingsworth **[2017] NSWCCA 224 (13 September 2017) – New South Wales Court of Criminal Appeal**

'Aggregate sentence' – 'Community interest' – 'General deterrence' – 'People living in regional, rural and remote communities' – 'Suspending an aggregate sentence'

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: Reckless wounding x 1; kidnapping x 1; assault occasioning actual bodily harm x 1; reckless grievous bodily harm x 1.

Case type Appeal against sentence.

Facts: The respondent was sentenced to 150 hours of community service for reckless wounding, and an aggregate sentence of 21 months imprisonment, which was suspended upon the offender entering into an 18 month good behaviour bond for assault occasioning actual bodily harm and recklessly causing grievous bodily harm. The assaults were committed against the respondent's partner, with whom he had 3 children, and her father. The respondent, his partner and their children lived in a small town with a largely Aboriginal population.

The respondent struck his partner, causing her to fall to the ground (Count 1). Later that evening, he drove her around the neighbourhood doing burnouts in his vehicle (Count 2). The respondent also hit her in the face while she was still in the car, pulled her from the car and hit her again, knocking her to the ground (Count 3). He also punched his partner's father a few times (Count 4).

Issue: The issue for the Court was whether to allow the appeal against the sentences.

Held: The Court held that the sentences imposed did not adequately reflect the community interest in general deterrence ([85]). Their Honours allowed the appeal against the sentences, and resentenced the respondent to an aggregate sentence comprising a non-parole period of 15 months, with a balance of term of 15 months, giving a sentence of 2 years and 6 months.

General deterrence is a matter of some importance in cases of domestic violence ([82]-[85]). Citing *The Queen v Kilic* [2016] HCA 48, the Court noted that '…current sentencing practices for offences involving domestic violence depart from past sentencing practices for this category of offence because of changes in societal attitudes to domestic relations'. This statement has been understood by the Court as reflecting the current response of the criminal law in relation to domestic violence as requiring 'rigorous and demanding consequences for perpetrators for the purpose of protecting partners, family members and the wider community' ([83]-[84], see also *Cherry v R* [2017] NSWCCA 150 at [78]).

Further, it did not appear on the evidence that the respondent expressed any remorse in relation to his attack on his de facto partner. In the absence of any finding of remorse or significant insight into the behaviour which led to the offending, specific deterrence should have been a key sentencing consideration ([82]). The violence to his partner occurred in a remote community which was not close to any police presence. Importantly, Count 3 took place in the presence of his partner's father, who tried to stop the attack. The Court held that her father did not escalate the violence or take the law into his own hands. He simply warned that he was calling the police. This act ought to have caused the respondent to come to his senses and cease the violent behaviour, but instead he started to attack the victim's father, causing grievous bodily harm. Therefore, in light of the statutory purposes of sentencing and the role of criminal law in redressing violence of this nature, the Court held that offences of such gravity cannot be dealt with as leniently as was done in this case ([107]-[108]).