***Monteiro v The Queen* [2014] NSWCCA 277 (26 November 2014) – New South Wales Court of Criminal Appeal**

'Aggravated rape' – 'Deterrence' – 'Emotional abuse' – 'Physical violence and harm' – 'Relevance of a prior relationship' – 'Sentencing'

Charge/s: Aggravated rape namely, immediately before sexual intercourse the appellant inflicted actual bodily harm.

Appeal Type: Appeal against sentence.

Facts: The male appellant was physically and verbally abusive towards the female complainant throughout their relationship. At the time of the offence, the relationship had ended and the appellant started yelling at the complainant that they should resume this relationship. He slapped the complainant in the face and proceeded to have sexual intercourse with her without her consent. The appellant was sentenced to 11 years imprisonment with a non-parole period of six years and six months for the principal offence of aggravated rape.

Issue/s: One of the grounds of appeal was that the sentence was manifestly excessive.

Decision and Reasoning: The manifest excess argument was dismissed. Counsel for the appellant submitted that the prior relationship between the appellant and the complainant was a factor that should have mitigated the sentence imposed. Bellew J noted that while the existence of a relationship between offender and victim can be a relevant consideration in determining the objective seriousness of sexual offending, each case must turn on its own facts. Here, the relationship was over and it therefore followed that the existence of a prior relationship was not a factor that warranted mitigation of sentence. In particular, this was not a case where the complainant had invited the appellant to engage in sexual intercourse with her or had indicated that she was prepared to do so (cf *NM v R* [2012] NSWCCA 215 and *Norman v R* [2012] NSWCCA 230.) His Honour continued at [131]-[132]:

'What remains important is that even though the relationship had ended, the offending occurred in what might be loosely described as a domestic setting. In R v Edigarov [2001] NSWCCA 436, Wood CJ at CL (with whom Studdert and Bell JJ agreed) said at [41]:

"As this Court has confirmed in Glen NSWCCA 19 December 1994, Ross NSWCCA 20 November 1996, Rowe (1996) 89 A Crim R 467, Fahda (1999) NSWCCA 267 and Powell [2000] NSWCCA 108, violent attacks in domestic settings must be treated with real seriousness. Regrettably, that form of conduct involves aggression by men who are physically stronger than their victims and who are often in a position economically, or otherwise, to enforce their silence and their acceptance of such conduct. In truth such conduct is brutal, cowardly and inexcusable, and the Courts have a duty to ensure that it is adequately punished, and that sentences are handed out which have a strong element of personal and general deterrence."

These principles were confirmed, after a review of the relevant authorities, by Johnson J (with whom Hunt AJA and Latham J agreed) in R v Hamid [2006] NSWCCA 302 at [65] and following. Leaving aside the question of general deterrence, the observations of Wood CJ at CL are directly apposite to the present case'.