

***McFarland v R* [2021] NSWCCA 79 (23 April 2021) – New South Wales Court of Criminal Appeal**

‘Application for leave to appeal against sentence’ – ‘Factors relevant to sentencing’ – ‘Manifest excess’ – ‘Misuse of alcohol or drugs by perpetrator’ – ‘Past domestic and family violence’ – ‘Physical violence and harm’ – ‘Strangulation’

Charges: Aggravated take and detain a person with intent to obtain advantage (aggravation being actual bodily harm, advantage being psychological gratification) plus a Form 1 for common assault x 1; Assault occasioning actual bodily harm x 1; Driving with a high range content of alcohol in blood x 1.

Proceedings: Application for leave to appeal against sentence.

Facts: The male applicant and female victim were in a de facto relationship. The intoxicated applicant assaulted the victim, punching and strangling her. He forced her partially into the car and drove 2.9 km, leaving her legs dragging along the gravel. The victim’s injuries were described by sentencing judge as “horrific” and representing the most serious form of actual bodily harm. The applicant pleaded guilty and was sentenced to an aggregate term of 7 years imprisonment, with a non-parole period of 4 years and 4 months.

Grounds of appeal: The sentence was manifestly excessive.

Held: Application for leave to appeal against sentence was granted. Appeal dismissed. The sentence was not manifestly excessive in light of the following factors:

- > Aggravated take and detain offence was assessed at above the mid-range of objective seriousness. The maximum penalty of 20 years imprisonment is an important legislative guidepost.
- > Assault occasioning actual bodily harm offence was assessed at the mid-range of objective seriousness. It carried a maximum penalty of 5 years imprisonment.
- > Applicant’s subjective case was not powerful, even taking account of his genuine remorse.
- > No evidence to support a finding that the applicant’s moral culpability was anything but high or that he was not an appropriate vehicle for general or specific deterrence.
- > Self-induced intoxication is not a mitigating factor.
- > Applicant’s prior conviction for domestic violence offending against his previous female domestic partner disentitled him to leniency.
- > Although the offending was unplanned, it was not fleeting. The totality of the offending involved relatively sustained violence.
- > Harm suffered by the victim was described by the sentencing judge as “horrific”.

- > It was necessary the sentence reflected specific deterrence, general deterrence, recognition of the human dignity of the victim and the community's legitimate interest in the denunciation of alcohol fuelled domestic violence.