***Glynn Kaderavek v R* [2018] NSWCCA 92 (11 May 2018) – New South Wales Court of Criminal Appeal**

'Emotional and psychological abuse' – 'Exposing children to domestic and family violence' – 'Perpetrator interventions' – 'Physical violence and harm' – 'Sentencing' – 'Strangulation' – 'Systems abuse'

Charges: Assault x 1; Recklessly causing grievous bodily harm x 1; Perverting the course of justice x 1.

Appeal type: Appeal against sentence.

Facts: The applicant and complainant lived together and had two children. The assault charge occurred when the applicant choked the victim and chased her around the backyard with a wooden stick. The grievous bodily harm charge occurred when the applicant punched the victim, breaking her jaw. The offender then smashed walls with a tow bar and broke belongings in the house. The offender gave a false statement to police alleging that there was a home invasion ([8]).

The chronology of sentencing was 'unusual' ([7]). The present offences were committed in August 2013, but the complainant did not report them to the police until July 2014 because of emotional abuse from the applicant ([8]). In March 2014, the applicant committed further offences against the complainant and was sentenced for those offences. At the time of sentencing for the present offences, the applicant was still in custody for the March 2014 offences ([7]). The judge made a finding of special circumstances to recognise the applicant's mental health issues. The sentencing judge stated that he would reduce the non-parole period so that the offender could be appropriately supervised when released into the community ([27]).

The applicant was sentenced to an aggregate sentence of 7 years' imprisonment with a non-parole period of 5 years. The sentence was ordered to commence on 7 July 2015 ([5]), the date of expiry of the total sentence (non-parole period and the balance of the term) for the March 2014 offences ([7]).

Issues: The applicant argued that the sentencing judge erred in wholly accumulating the sentence on earlier sentences because the judge failed to take into account:

- a period of pre-sentence custody;
- the effect of the earlier sentences on the total ratio between the non-parole period and total sentence; and
- the principle of totality ([6]).

Decision and Reasoning: The first ground was upheld because Hamill J (Beazley P and Schmidt J agreeing) found that the sentence should have commenced on 7 April 2015, the expiry date of the non-parole period for the March 2014 offences. Hamill J dismissed the second and third grounds of appeal because there was no error in wholly accumulating the sentences or the judge's application of the principle of totality ([23]-[24]).

Hamill J held that the total impact of the sentence negated the judge's finding of special circumstances. This was because the when the entire period of imprisonment was taken into account, there was no decrease in the non-parole period ([28]).

Hamill J considered that he needed to exercise the sentencing discretion afresh, in accordance with *Kentwell v The Queen* [2014] HCA 37 ([30]). Hamill J imposed the same head sentence. His Honour commenced the sentence on 7 April 2015 and reduced the non-parole period to 4 years and 6 months to reflect the finding of special circumstances ([31]).