***Wood v R* [2019] NSWCCA 94 (19 December 2019) – New South Wales Court of Criminal Appeal**

'Absence of planning' – 'Apprehended violence order' – 'Gratuitous cruelty' – 'Intoxication' – 'Manifestly excessive' – 'Misuse of alcohol' – 'Murder' – 'Past domestic violence' – 'Strangulation' – 'Weapon'

Charges: Murder x 1; Contravention of an Apprehended Violence Order x 1.

Proceedings: Appeal against sentence.

Facts: The applicant sought leave on the following grounds:

- The sentencing judge erred in having regard to the applicant's record of previous convictions as a matter that aggravated the offence;
- The judge erred in taking into account the fact that the applicant was on conditional liberty as a factor that aggravated the offence;
- The judge erred in failing to have regard to the lack of planning in assessing the objective seriousness of the offence;
- The judge erred in failing to take into account the applicant's disadvantaged background as a factor relevant to his moral culpability;
- The sentencing judge erred in finding that the applicant's intoxication aggravated the applicant's offending;
- The judge erred in find that the Crown had proven beyond reasonable doubt that the applicant's offending involved gratuitous cruelty; and
- The sentence was manifestly excessive. [5]

The applicant and the deceased had been in an 'on again/off again relationship' characterised by domestic violence for three years [9]. He pleaded guilty and was sentenced to a non-parole period of 19 years 1 month with a balance of term of 6 years and 5 months. The applicant violently killed the deceased, stabbing her with a knife, when both were intoxicated, the applicant having come home an hour earlier than the deceased. At the time of the murder he was subject to a s 20(1)(b) Crimes Act 1914 (Cth) recognisance for 18 months, commencing 17 May 2017 and expiring 16 November 2018 and a s 9 Crimes (Sentencing Procedure) Act bond for 18 months, commencing 17 May 2017 and expiring 16 November 2018.

Decision and reasoning: The application for leave to appeal was granted in respect of grounds 3 and 6, the appeal allowed substituting a sentence of 24 years' imprisonment with a non-parole period of 18 years.

Regarding the third ground, the court found that the absence of planning is a ‘consideration which goes to the objective seriousness of the offending and was wrongly taken into account by the sentencing judge when considering the applicant’s subjective case’ [108]. This ground of appeal was made out.

Hoeben CJ held that the sixth ground was made out as on the evidence available to the sentencing judge it was not possible to conclude that the injuries were inflicted at a time other than of the killing.