

## ***R v Corak Phan* [2021] NSWDC 3 (28 January 2021) – New South Wales District Court**

‘Assault’ – ‘Breach protection order’ – ‘Bugmy principles’ – ‘People affected by substance misuse’ – ‘People affected by trauma’ – ‘People with mental illness’ – ‘Sentencing’ – ‘Separation’ – ‘Sibling abuse’

Charges: Common assault x 2; Knowingly contravene a prohibition or restriction in an Apprehended Domestic Violence Order x 1.

Proceedings: Sentencing.

Facts: The male offender and the female first victim had previously been in a domestic relationship (they had a child together) and had separated. The offender breached a protection order by being in the vicinity of the victim, and subsequently punched her a number of times to the head and upper body. The second victim was the offender’s sister. The offender pulled his sister by her ankles off a couch. The offender had an extensive criminal history and was on conditional liberty at the time of the offending. He had a dysfunctional childhood, and an extensive history of drug and alcohol misuse. A psychologist opined that he met the criteria for Substance Induced Psychotic Disorder, and Post-Traumatic Stress Disorder.

Decision and reasoning: An aggregate sentence of 20 months imprisonment was imposed, with a non-parole period of 10 months.

The offences against the offender’s former partner fell in the mid-range of objective seriousness, as she was protected by an Apprehended Domestic Violence Order at the time and there was clear contravention of a court order ([43]-[44]). The assault of the offender’s sister fell in the lower range of objective seriousness ([45]).

Mahoney SC DCJ noted at [46]-[47], discussing the principles in *Bugmy v R*:

“That the offending occurred whilst the offender was in the grip of a drug addiction, does not mitigate the seriousness of the offending. Notwithstanding that the offender gave no evidence, and the court must approach self-serving reports to psychologists with some caution, I do take into account the subjective matters outlined in the report of Ms Minovski, namely, a dysfunctional childhood marred with neglect, physical and sexual abuse and exposure from an early age to drug and alcohol abuse, together with domestic violence, giving rise to the principles outlined by the High Court in *Bugmy v R*  
.....

“I am therefore satisfied that the offender’s recourse to violence in the circumstances outlined above, albeit fuelled by his drug addiction, are such that the offender’s moral culpability for his inability to control his impulses must be somewhat reduced.”