

***R v Cranston* [2019] NSWDC 619 (1 November 2019) – New South Wales District Court**

‘Assault police’ – ‘Exposing a child’ – ‘Guilty plea’ – ‘Intoxication’ – ‘Physical harm and violence’ – ‘Sentencing’ – ‘Step-child’

Charges: Common assault x 1; assaulting a police officer x 3; attempting to use an offensive weapon with intent to commit an indictable offence x 1; choking a police officer and being reckless as to render the officer incapable of resistance x 1.

Proceedings: Sentencing

Facts: The accused pushed his partner during an argument, causing her to stumble. Concerned by the accused’s actions, his partner instructed one of their children to call the police. The accused became further enraged when the police arrived, kicking one of the officers while being questioned. Two of the officers wrestled with the accused while he continued to physically lash out. The accused then grabbed the cord of one of the officer’s radio as she called for assistance and attempted to choke her. As the officers tried to handcuff him the accused attempted to obtain one of their firearms, threatening to use the gun on the police and then bit the officer. When other officers arrived another officer was also bitten by the accused. The accused was intoxicated at the time of offending. The accused pleaded guilty to all charges.

Issue: Appropriate sentence

Decision and reasoning: The accused was sentenced to 3 years and 6 months’ imprisonment with a fixed non-parole period of 1 year and 9 months.

Objective Seriousness: Regarding the assault against the police officers, Abadee J thought that the assault occurring during a violent struggle and in the presence of children were aggravating factors [32].

Consequently, the conduct was assessed as falling within the mid-range of seriousness for the offence.

The presence of children when the accused threatened to use the firearm on the officers was considered to be an aggravating factor along with the context of escalating violence. Abadee J ‘characterise[d] the conduct as falling beyond the mid-range and toward the high range of objective seriousness’ [35]. The same circumstances were aggravating factors for the offence of choking on of the officer, with the conduct also falling within the high range of objective seriousness.

Subjective Circumstances The accused was 50 at the time of offending and had a criminal history which included some offences of a violent character. The guilty pleas entered by the accused were not made at the earliest opportunity. As the accused was intoxicated, 'his offending was impulsive or spontaneous; and not pre-planned'. 'The most significant issue in the sentencing hearing concerned the offender's background' of a dysfunctional childhood marked with sexual abuse and moderate alcoholism.

In considering these circumstances, the objective seriousness of the offences and the general principles of deterrence, Abadee J ordered 'an aggregate sentence to fit the totality of the criminal conduct overall' discounted by 15% [76].