

***R v Misdale* [2019] NSWDC 858 (16 December 2019) – New South Wales District Court**

‘Domestic violence offences’ – ‘Guilty pleas’ – ‘People affected by substance misuse’ – ‘Physical violence and harm’

Charges: Wounding with intent to cause grievous bodily harm x 1; assault occasioning actual bodily harm x 1; reckless wounding x 1

Case type: Sentence

Facts: The male offender pleaded guilty to wounding with intent to cause grievous bodily harm, assault occasioning actual bodily harm and reckless wounding. Neilson DCJ also took into account 2 matters on a Form 1, namely, offences of common assault and intimidation. The female complainant (in respect of the charges of wounding with intent to cause grievous bodily harm, intimidation, assault occasioning actual bodily harm and common assault) was in an intimate relationship with the offender, which ended in October 2017 but recommenced a year later. The victim (in respect of the charge of reckless wounding) was a male friend of the offender and complainant. All but one offence (reckless wounding) were domestic violence offences. The offender’s relationship with the complainant was described as ‘toxic’.

Issue: The issue for the Court was to determine the appropriate sentence for the offender.

Held: The offender’s extensive criminal history evidenced a pattern of alcohol-fueled violence and, more recently, offences committed against the current complainant ([28]-[38]). The offender’s personal circumstances were discussed at [39]-[48]: he had a long history of drug and alcohol abuse; he had a problematic pattern of gambling when under the influence of alcohol and cocaine; he only had intermittent and low paying employment; he struggled to maintain stable intimate relationships and his relationship with the complainant was marred by verbal and physical arguments; and he displayed insight into his need for treatment for his addictions and showed no impairment in cognition when he was free of alcohol and drugs. Further, the offender was assessed as being at a high risk of re-offending ([49]), and was considered as requiring ‘as much supervision...and assistance as he can obtain from Community Corrections...to stay free of drugs and alcohol and turn his life around’ ([53]). The Court noted the importance of denunciation, as well as deterrence ‘both of the offender and of others who might want to practise violence, in particular domestic violence’ ([56]). Consequently, the offender was convicted of the 3 charges to which he pleaded guilty, and sentenced to 7 years and 6 months’ imprisonment, with a non-parole period of 4 years and 6 months ([66]). Special circumstances were established because of the offender’s need for treatment and support for his drug and alcohol addiction ([64]).