

## ***R v Duncan* [2015] NTCCA 2 (9 February 2015) – Northern Territory Court of Criminal Appeal**

‘Aboriginal and Torres Strait Islander people’ – ‘Alcohol’ – ‘Exceptional circumstances’ – ‘Manifestly inadequate’ – ‘Mitigating factors’ – ‘People living in regional, rural and remote communities’ – ‘Physical violence and harm’ – ‘Rehabilitation’ – ‘Sentencing’ – ‘Unlawfully causing serious harm’ – ‘Victim’

Charge: Unlawfully causing serious harm

Appeal Type: Crown appeal against sentence

Facts: The respondent and the victim were in a domestic relationship and had a young daughter. After drinking together near the remote community of Kalkarindji, the respondent and victim got in an argument. The respondent, who was intoxicated, threatened to stab the victim with a pen and subsequently stabbed him in the back with a knife.

Following an early guilty plea the respondent was sentenced to 18 months imprisonment, suspended immediately. The respondent is an Aboriginal woman who attended school until the end of year 6. She had never been employed and lived with the victim, their child and family. She received parenting payments from Centrelink. The trial judge found the respondent’s remorse was genuine. She waited for emergency services to arrive, made immediate admissions to police and subsequent formal admissions. The respondent continued to look after her young child while living with the victim, who had forgiven her. Finally, the trial judge found she had reasonable to good prospects of rehabilitation having not consumed alcohol since she committed the offence.

Issues:

- > Whether the sentence imposed was manifestly inadequate.
- > Whether the circumstances of the case were ‘exceptional’ pursuant to section 78DI of the *Sentencing Act* to displace the minimum mandatory term of 3 months imprisonment.

Decision and Reasoning: The appeal was allowed and the respondent was resentenced.

- > The sentence imposed on the respondent was manifestly inadequate. The offending was objectively very serious, with the respondent’s violent response to the verbal argument being ‘utterly disproportionate’ ([18]). The Court noted that alcohol-related violent crimes are ‘a great drain on the medical resources of the Northern Territory and are an enormous cost to the community’ ([18]). In light of this and the objective seriousness of the offending, the sentence imposed was ‘so manifestly disproportionate to the seriousness of the offending that it shocks the public conscience’ ([19]). While

the respondent's subjective circumstances entitled her to considerable leniency, they could not justify a sentence disproportionate to the offending. As such, the sentence was increased to a term of three years imprisonment, to be suspended after six months with an operational period of two years and six months. In determining this sentence, the Court took into account the respondent's age of 19, her responsibility for her child and other mitigating factors referred to by the trial judge.

- > As the Court upheld the sentence as manifestly inadequate and imposed a sentence that involved actual imprisonment for more than three months, it did not consider whether 'exceptional circumstances' for the purposes of section 78DI were present on the facts. However, the Court noted in obiter that what amounts to 'exceptional circumstances' will be a matter for the court in considering the facts of each individual case. The Court considered that whether the victim's wishes with respect to sentencing should be taken into account as exceptional circumstances is for the discretion of the court in each case ([24]).