***Namundja v Schaefe-Lee* [2015] NTSC 36 (12 June 2015) – Northern Territory Supreme Court**

'Aboriginal and Torres Strait Islander people' – 'Aggravated assault' – 'Alcohol' – 'Breach of alcohol protection order' – 'Deterrence' – 'History of abuse' – 'Mitigating factors' – 'Non-parole period' – 'Physical violence and harm' – 'Rehabilitation' – 'Repeat offender'

Charges: Aggravated assault, breach of alcohol protection order

Appeal type: Appeal against sentence

Facts: The appellant, who was intoxicated at the time, had an argument with his wife (the victim). He subsequently dragged the victim outside, punched her in the face multiple times, shoved her into a shelf and punched her twice in the stomach. He was charged and pleaded guilty to one count of aggravated assault under s 188(2)(b) *Criminal Code 1983* (NT) (victim suffered harm and male-on-female assault) and one count of breaching a police issued Alcohol Protection Order. The appellant had a number of previous convictions, including three counts of aggravated assault against the victim, four counts of breach of a domestic violence order and nine counts of breaching an Alcohol Protection Order. He resided in Oenpelli and had been an artist member of Injalak Arts for around 20 years. This job would continue on the appellant's release. His counsel argued his prospects of rehabilitation would be improved if he participated in the Family Violence Program. At trial, the magistrate relied on the seriousness of the offending and his past history to conclude the appellant needed to be specifically deterred, despite any positive attributes, and the community needed to know such conduct is unacceptable. The appellant was sentenced to 12 months imprisonment after a reduction of four months for pleading guilty. A non-parole period was not fixed due to the seriousness of the offending and continued ongoing breaches of court orders.

Issues: Some issues on appeal were whether the magistrate:

- Failed to adequately consider the appellant's prospects of rehabilitation;
- Failed to adequately consider the principles outlined in *Dinsdale v R* [2000] HCA 54 that all relevant sentencing considerations must be reconsidered in determining whether to suspend a sentence; and
- Failed to adequately consider the sentencing disposition of parole.

Decision and Reasoning: The appeal was upheld on ground 3. Grounds 1 and 2 were dismissed.

Blokland J began by noting that ‘Offending of this kind, men assaulting their wives or partners, is an intractable problem in the Northern Territory. With few exceptions, imprisonment is often the appropriate punishment… In most cases, particularly with respect to repeat offenders, positive subjective features generally need to be very carefully balanced as rarely will they outweigh the significance of the gravity of offending of this kind.’ ([19])

- The fact the magistrate did not specifically refer to the appellant’s job history and prospective employment did not mean that he failed to adequately consider these factors. Given the severity of the offending, previous convictions, the need to protect the victim and the prevalence of domestic violence in the particular case, such factors would not have resulted in a lesser sentence.
- While the magistrate did not explain every consideration taken, he was entitled to refuse a suspended sentence due to the appellant’s poor history of complying with orders.
- There was no sufficient basis to decline to set a non-parole period in accordance with s 54(1) of the *Sentencing Act 1995* (NT). Under s 53(1), a court must set a non-parole period in cases of imprisonment for 12 months or more ‘unless it considers the nature of the offence, the past history of the offender or the circumstances of the particular case make the fixing of such period inappropriate’. The magistrate failed to consider these factors, basing his decision primarily on the previous breaches of orders. Therefore, this ground of appeal succeeded and a non-parole period of 8 months was ordered.