

***Mamarika v Rourke* [2015] NTSC 42 (23 July 2015) – Northern Territory Supreme Court**

‘Aggravated assault’ – ‘Alcohol’ – ‘Deterrence’ – ‘History of abuse’ – ‘Physical violence and harm’ – ‘Pregnant victim’ – ‘Sentencing’ – ‘Totality’

Charge: Aggravated assault

Appeal Type: Appeal against sentence

Facts: The appellant, who was intoxicated at the time, pushed and punched his pregnant wife (the victim) in the stomach and head. After handing himself into police, he pleaded guilty to unlawfully assaulting the victim with the aggravation of male-on-female assault (under s 188(2)(b) *Criminal Code 1983* (NT)). When asked why he assaulted the victim he said it was because his wife told him to stop drinking. The appellant was initially convicted and sentenced to a term of 10 months imprisonment, to be served cumulatively upon a restored sentence of seven months for previous offending including assaulting the same victim. This earlier assault involved the appellant striking the victim with a sword, then punching and kicking her.

In sentencing, the magistrate emphasised that the victim was pregnant at the time the assault occurred: ‘Women of course deserve to be safe whether they are in Darwin, whether they are at home, and they do not deserve to be treated in this way, particularly – and it is an aggravating factor – when she was 28 weeks pregnant.’ (at [7]). A reduction to the sentence was given when considering the principle of totality and the presence of the appellant’s guilty plea.

Issues:

- Whether the magistrate erred in failing to properly give effect to the principle of totality.
- Whether the sentence imposed was manifestly excessive.

Decision and Reasoning: The appeal was dismissed.

- The appellant argued that the magistrate did not assess the overall sentence and consider whether any further adjustment was warranted, as required by *Mill v R* [1988] HCA 70. That is, she did not make the sentence concurrent or partially concurrent with the restored sentence. Rather, the magistrate applied the principle of totality by reducing the sentence for the fresh offending. Barr J rejected this argument in finding the magistrate clearly stated she had applied the principle of totality and whilst the method was not preferable, it was nonetheless appropriate.
- In determining whether the sentence was manifestly excessive, Barr J considered the previous offending of the appellant. In addition to a significant number of property offences, he had been

convicted five times for aggravated assault and once for a breach of a domestic violence order. When considering this history of offending and the present assault, the objectives of denunciation, punishment, general deterrence and specific deterrence were relevant to the sentencing of the appellant. Barr J found when taking all these factors into consideration and characterising the offending as 'mid range' (at [16]), the appropriate starting point was 18 months. A discount of one third for the guilty plea, as given by the Magistrate, was justified in the circumstances, resulting in a sentence of 12 months. When applying the principle of totality to this sentence, there was some basis for concurrency of three months. This hypothetical sentencing exercise resulted in a total effective sentence of 16 months. Therefore, the sentence of 10 months imprisonment was not manifestly excessive in its own right or when fully accumulated with the restored sentence of seven months imprisonment.