

***Anderson v Nicholas* [2019] NTSC 55 (5 July 2019) – Northern Territory Supreme Court**

‘Appeal against sentence’ – ‘Misuse of alcohol’ – ‘Past domestic violence against former partners’ – ‘Physical violence and harm’ – ‘Poor prospects of rehabilitation’ – ‘Threats to kill’ – ‘Weapon’

Charges: Aggravated assault x 1; Threat to kill x 1.

Case type: Appeal against sentence

Facts: The appellant man pleaded guilty to, and was convicted of, committing aggravated assault against his female ex-partner with a knife, and threatening to kill another person who tried to assist his ex-partner with her injury. The appellant had 14 prior convictions, including 12 for aggravated assault, most on women and some of whom were his previous partners, as well as numerous breaches of domestic violence orders and orders suspending sentences. The offending occurred whilst he was intoxicated and angry. The sentencing judge found the conduct to be intentional, and imposed a sentence of 4 years’ imprisonment, with a non-parole period of 3 years.

Issue:

- > The sentence was manifestly excessive;
- > The total effective sentence was manifestly excessive;
- > The sentencing judge erred in the assessment of the appellant’s moral culpability and in finding intoxication to be an aggravating circumstance;
- > The sentencing judge failed to afford the appellant procedural fairness.

Held: The appeal was dismissed, as neither the head sentence nor the non-parole period was manifestly excessive. The appellant's extensive criminal history of violent conduct, particularly drunken violence, was relevant as it demonstrated a continuing attitude of disobedience to the law and the need to impose condign punishment for specific or general deterrence. It also indicated that the appellant had poor prospects of rehabilitation, and that community protection was a paramount consideration. Further, the Court noted that the offences, although taking place around the same time, involved two different victims and two different violent acts. It was therefore appropriate for the sentencing judge to reflect those differences in the way she did by fixing a total sentence and allowing for some concurrency ([60]-[61]). In relation to the non-parole period, the appellant's prospects of rehabilitation, his age, criminal record and the protection of the community were particularly relevant. The non-parole period was justified, given his very poor prospects of rehabilitation and his "dreadful criminal history" ([67]). Further, the sentencing judge did not err in finding that intoxication was an aggravating circumstance of the appellant's "brazen, excessive and egregious" conduct ([43]-[44]).