

***Douglas v Dole & Ors* [2019] NTSC 80 (15 October 2019) – Northern Territory Supreme Court**

‘Breach of bail’ – ‘Children’ – ‘Damaging property’ – ‘Deterrence’ – ‘Evidence of domestic violence history’ – ‘Exceptional circumstances’ – ‘Female perpetrator’ – ‘History of abuse’ – ‘Jealous behaviour’ – ‘Manifestly excessive’ – ‘Misuse of alcohol’ – ‘Past domestic violence’ – ‘People affected by substance misuse’ – ‘Physical violence and harm sentence’ – ‘Victims as (alleged) perpetrators’

Charges: Aggravated assault x 2; Criminal damage x 1; Breach of bail x 3

Proceedings: Appeal against sentence

Facts: The appellant and the first victim were in a domestic relationship for six years (since the appellant was 13), during which the appellant had allegedly been subjected to significant domestic violence at the hands of the victim. On the night of the incident, the appellant started verbally abusing the victim while intoxicated. The victim left the room, but shortly returned to get his wallet. The appellant had found the victim’s wallet and started to cut up his licence. As the victim took the wallet back and tried to leave again the appellant stabbed him behind the knee with the scissors, preventing the victim from being able to walk. During the sentencing hearing, the appellant submitted ‘that on the night the appellant attacked [the first victim] her emotions which had been built up over an extended period of time overflowed and she could not control herself’, claiming the violence to be an exceptional circumstance.

The appellant (and her co-offender) assaulted the second victim a week later. The two offenders were intoxicated and engaged in a verbal argument with the victim. The co-offender then punched the victim in the side of her face with the appellant then punching the victim’s forehead, causing a large haematoma. The two offenders threw rocks at the glass door of the building the victim escaped to, causing the glass panel to break.

Issues: Two grounds of appeal – whether the sentencing Judge failed to properly exercise his discretion to find exceptional circumstances; and whether the sentence was manifestly excessive.

Decision and reasoning: The appeal on the first ground was allowed and the three months actual imprisonment set aside. The appeals on the other grounds were dismissed.

Ground 1:

The appellant had submitted that the violence characterising her relationship with the first appellant amounted to exceptional circumstances. While the sentencing judge had accepted that the appellant had been exposed to domestic violence, he concluded that ‘the material placed before him was not sufficiently specific to allow a firm conclusion to be drawn that the appellant’s background of domestic violence was operative on the appellant at, or generally around the time of offending’ [42]. Southwood J agreed with the sentencing judge, providing that ‘the difficulty with [the appellant’s] submission was that ‘there was no evidence before the Local Court or [the Supreme Court] that violence had become normalised for the appellant. To the contrary, the facts of the offending and the appellant’s criminal record established that the violence was out of character for the appellant and the main criminogenic factors in her offending were the consumption of alcohol and jealousy’ [46]. However, Southwood J still found that the sentencing judge had failed to consider the appellant’s other ‘exceptional’ personal circumstances such as her young age and no prior convictions for criminal offences. As such, the sentence imposed was unjust.

Ground 2:

The sentence of one-month imprisonment is appropriate as it does not crush the appellant’s prospects of rehabilitation and gives necessary and appropriate consideration to the principles of deterrence and denunciation.