

***Williams v Firth & Anor* [2020] NTSC 9 (24 February 2020) – Northern Territory Supreme Court**

‘Aboriginal and Torres Strait Islander people’ – ‘Appeal against sentence’ – ‘Breach of bail’ – ‘Children’ – ‘Exceptional circumstances’ – ‘Female perpetrator’ – ‘Physical violence and harm’

Charges: Aggravated assault x2; Breach of bail x1

Appeal type: Appeal against sentence

Grounds:

That the sentences imposed were manifestly excessive; and

That the learned sentencing Judge erred in finding that the circumstances of the case were not exceptional pursuant to s 78DI of the Sentencing Act.

Facts: The appellant woman, a 28 year old Wurrumiyanga woman and the male second victim of aggravated assault (Elton Limbiari) had been in a domestic relationship for three years and had two children together. Their relationship ended in 2015, and Limbiari later commenced a 2-week relationship with the first aggravated assault victim (Raggett). On the night of offending, the appellant went to Raggett’s property where she found both victims asleep on the veranda. She approached Raggett, grabbed her by the hair and dragged her down from the bed before punching her numerous times in the face, causing immediate pain and minor bruising. Limbiari was woken by the noise and, upon seeing Raggett being assaulted, tried to walk away but was stopped by the appellant punching him from behind. The punch causing minor swelling and bruising to his jaw.

The appellant was arrested and charged the next day. She later pleaded guilty to both charges of aggravated assault and was sentenced to 3 months imprisonment for each count, to be served concurrently. While later on bail to appear, the appellant did not appear and a warrant, thus breaching one of her bail conditions. The appellant also pleaded guilty to the charge of breach of bail and was convicted and sentenced to imprisonment for 1 month to be served cumulatively with the other sentences. The sentencing judge gave consideration to some matters put in mitigation on the appellant’s behalf, but very little consideration to the fact that she was the mother of four children.

Judgment:

The sentence The Appellant's circumstances were truly exceptional when all relevant circumstances were considered, "including the relatively minor offending, the lack of any serious injuries to the victims, the fact that the appellant has apologised to both victims and the apologies have been accepted, her limited criminal history, the previous assault conviction was a long time ago and only resulted in a good behaviour bond, the extraordinary efforts she has made voluntarily to give up alcohol and attend family violence courses, the fact that she has left Tennant Creek with her children to start a new life away from influences which have got her into trouble in the past and the fact that she is a sole parent of four young children" [30]. His Honour rejected counsel for the respondent's submission that "to establish one of the exceptions in R v Nagas, it is necessary to produce cogent evidence that imprisonment would effectively deprive the children of parental care", holding that "where the parent is a sole parent, particularly where the children are young and the appellant is the mother and sole carer of the children... different considerations arise. It is relevant that the children have someone close to them to look after them if the appellant is imprisoned, but a term of imprisonment which separates a mother from her young children can have a devastating effect on a child's welfare and upbringing." [29]

His honour rejected the submissions that the sentence in relation to the breach of bail was manifestly excessive, finding that the offender's "criminality was properly reflected in the sentences imposed" [31].