

***Hales v Stevens* [2000] NTSC 97 (14 December 2000) – Northern Territory Supreme Court**

‘Aboriginal and Torres Strait Islander people’ – ‘Aggravated assault’ – ‘Deterrence’ – ‘Intermediate sentence’ – ‘Manifestly inadequate’ – ‘Perpetrator intervention program’ – ‘Physical violence and harm’ – ‘Remorse’ – ‘Sentencing’

Charge: Aggravated assault

Appeal type: Crown appeal against sentence

Facts: The respondent and the victim had previously been in a relationship. After the relationship ended, the respondent visited the victim’s home where he punched her in the head 10 times, kicked her in the ribs and chest several times and pushed her head into the floor. After the victim temporarily escaped to another room, the respondent struck her again several times and subsequently attempted to strangle her, placing one hand around her throat and the other over her mouth and nose. The attack lasted for approximately 20 minutes and involved about 30 punches. At the time of the offending, the respondent was on bail. In relation to this conduct the respondent was convicted of aggravated assault under s 188(2)(b) *Criminal Code 1983* (NT), with the circumstances of aggravation that the victim suffered harm, the assault was of male-on-female, and the victim was under the age of 16 years old.

The magistrate, in taking a ‘rehabilitative course’ ([5]), sentenced the respondent to 12 months’ imprisonment suspended the day after imprisonment commenced for 3 years. The release of the respondent was subject to conditions including that he obey the directions of the Director of Correctional Services for 12 months, that he reside at the Council for Aboriginal Alcohol Program Services and complete the Indigenous Family Violence Program, that he then live with the Salvation Army in Darwin and complete the Bridge program, and that for a period of 12 months he supply urine or blood samples to be tested for drugs.

Issue: Whether the sentence was manifestly inadequate.

Decision and reasoning: The appeal was allowed and the appellant was resentenced.

The circumstances of the offence were very serious and resulted in severe physical and psychological harm to the victim. This was further aggravated by the fact the offending occurred while the respondent was on bail in relation to another assault.

The magistrate's consideration of the respondent's chances of rehabilitation and personal hardships was appropriate in the circumstances. The respondent had been attending alcohol and drug education programs and had enrolled in the Indigenous Family Violence Program. According to the magistrate, this was the first step along the road to rehabilitation.

However, the magistrate did not expressly address the issue of deterrence that ought to have been afforded significant weight in sentencing. Despite the guilty plea, there was no indication of remorse with the respondent telling his psychologist he believed he 'had a degree of legitimacy' ([22]) for his actions. Therefore, Riley J considered there was a need for specific deterrence. In addition there was a need for general deterrence: 'Men in the position of the respondent should be aware that if they resort to violence upon another... in all but the most exceptional case that will be met with a period of actual imprisonment ([24]).' While the magistrate impliedly considered specific deterrence with rehabilitation, there was no consideration of general deterrence during sentencing. The magistrate's main focus was to provide the respondent every opportunity to be rehabilitated. Riley J concluded that the magistrate erred in neglecting to consider the need for general deterrence and the respondent's lack of remorse.

The sentence of 12 months' imprisonment was not in itself manifestly inadequate. However, it was manifestly inadequate to suspend the sentence from one day after commencing imprisonment. In the circumstance, a term of actual imprisonment was required. Riley J resentenced the respondent to 12 months' imprisonment to be suspended after 3 months. The respondent's release was subject to several conditions, including accepting supervision and obeying reasonable directions of the Director of Correctional Services as to reporting, residence, employment and counselling for a period of 12 months and completing the Bridge program with the Salvation Army.