

***NPA v The State of Western Australia* [2018] WASCA 131 (2 August 2018) – Western Australia Supreme Court (Court of Appeal)**

‘Physical violence and harm’ – ‘Post-separation violence’ – ‘Sentencing’ – ‘Sexual and reproductive abuse’ – ‘Social and psychological abuse’ – ‘Strangulation’ – ‘Totality principle’

Charges: Aggravated sexual penetration without consent x 5; Attempted aggravated sexual penetration without consent x 1; Threat to harm x 1.

Appeal type: Defendant appeal against sentence.

Facts: The appellant and complainant were in an ‘on again, off again’ relationship. The appellant was controlling, manipulative, and required the complainant to change her mobile phone number so that her family and friends could not contact her. There were two main occasions of sexual offending. On the first occasion, at a time where they had broken up, the appellant was invited to the complainant’s house. He held the complainant down and inserted his penis into her vagina ([11]). On the second occasion, the appellant entered the house uninvited. Over the next 8 to 9 hours, the appellant repeatedly raped the complainant, choked her, and smashed a TV remote over her head ([17]-[26]).

The appellant was convicted of the charges and was sentenced to a total effective sentence of 12 years’ 6 months imprisonment ([1]).

Issues: Whether the total effective sentence infringed the first limb of the totality principle by not reflecting the overall criminality.

Decision and reasoning: The Court held that the sentence did reflect the overall criminality. The Court referred to serious and aggravating factors including the maximum sentences, the repeated nature of the offences, the prolonged nature of the second occasion, the appellant using degrading and insulting threats towards the complainant and the appellant’s refusal to accept the complainant’s ending of the relationship ([52]).