

***The State of Western Australia v Anderson* [2004] WASCA 157 (29 July 2004) – Western Australia Supreme Court (Court of Appeal)**

‘Aboriginal and Torres Strait Islander people’ – ‘Aggravating factor’ – ‘Assault occasioning bodily harm’ – ‘Parole eligibility order’ – ‘People living in regional, rural and remote communities’ – ‘Physical violence and harm’ – ‘Remorse’ – ‘Threat to kill’

Charge/s: Assault occasioning bodily harm, threat to kill.

Appeal Type: State appeal against sentence.

Facts: While intoxicated, the respondent, an Aboriginal man, found the complainant (his de facto partner) in bed asleep with another man. The respondent slapped and punched the complainant which woke her. The respondent then pulled her from her bed and dragged her 200m down a street, at which point he hit her repeatedly with a steel stake and ripped her bra off. He then grabbed her throat, threatened to kill her repeatedly and pinned her to the ground. She was in genuine fear for her life. The respondent’s criminal history included serious incidents of domestic violence committed against his former partner and other offences of violence. He was sentenced to 18 months’ imprisonment for each offence, to be served concurrently. A parole eligibility order was not made.

Issue/s: Whether the sentencing judge erred in reducing the length of the sentence to allow for the fact that he did not make a parole eligibility order.

Decision and Reasoning: The appeal was upheld. The Court held that the sentencing judge erred by reducing the sentence on account of not making a parole eligibility order. Jenkins J (with whom Murray and McLure JJ agreed) noted that the sentence imposed at trial was significant, given the respondent’s plea of guilty and the maximum penalties. However, the Court noted the seriousness of the offence and described it at [26] as ‘close to the worst category of cases of this kind’. The offending was aggravated by the repeated use of a weapon and the complainant being humiliated by the removal of her bra which rendered her half naked during the beating. The context in which the respondent found the complainant amounted to ‘some mitigation’ but this was ‘not significant’, given the respondent’s history of domestic violence and having previously undergone counselling in anger management and substance abuse (see at [28]). Indeed, an exchange with the sentencing judge showed that it was unlikely his plea was indicative of true remorse (see at [14]). The sentence was increased to two years’ imprisonment.