Wongawol v The State of Western Australia **[2011] WASCA 222 (17 October 2011) – Western Australia Supreme Court (Court of Appeal)**

'Aboriginal and Torres Strait Islander people' – 'Community protection' – 'Deterrence' – 'Intention' – 'Murder' – ' People affected by substance abuse' – 'Physical violence and harm' – 'Sentencing' – 'Traditional Aboriginal and Torres Strait Islander punishment'

Charge/s: Murder

Appeal Type: Appeal against sentence.

Facts: On the day of the offence, the appellant (an Aboriginal man) was intoxicated and had been smoking cannabis. He returned home and an argument ensued relating to his partner's confession that she had been 'sexually misbehaving' (see at [4]). The appellant became angry and attacked her with a knife. The blows were struck mainly in the region of her legs. The sentencing judge held that the fact he mainly stabbed her in the legs, as opposed to, (for example) in the chest was not particularly relevant to establishing the requisite intention – the appellant struck a considerable number of blows randomly with the intention of causing serious harm. The appellant was sentenced to life imprisonment with a non-parole period of 14 years.

Issue/s:

1. Whether the sentencing judge failed to recognise the significance of the stabbing being in the legs when making conclusions with respect to the intention with which the blows were inflicted.
2. Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed.

1. The appellant submitted that he was a traditional full-blood tribal Aboriginal man and was familiar with the concept of spearing or stabbing in the legs as punishment. The sentencing judge found that the appellant intended to hurt the deceased severely by punishing her for sexual misbehaviour. In the past, the appellant had self-harmed by stabbing himself and the deceased in the thigh. The appellant submitted that this was relevant to the sentencing judge's conclusion with respect to intention. This argument was rejected – McLure P (with whom Buss JA and Mazza J agreed) held that the number and distribution of the wounds 'reflect the frenzied nature of the appellant's attack on the deceased and more than adequately support the sentencing judge's finding' (see at [30]).
2. The appellant had a long history of violent offending. He was described as being 'aimless' and as having a problem of habitual intoxication and use of cannabis. The appellant submitted that the sentencing judge placed too much weight on these 'lifestyle issues' and grossly dysfunctional background. This argument was rejected – a psychologist's report confirms that the appellant uses violence in order to

solve conflict. Further, his substance abuse contributed to his offending and he had limited insight into his problems. His prospects of rehabilitation were poor. As McLure P noted at [39] –

'This is a case where the protection of the community in which the appellant lives and both personal and general deterrence are very weighty sentencing considerations. The incidence of alcohol and drug fuelled violence within Aboriginal communities is distressingly high. A new generation of children are scarred. The cycle continues. Having regard to all relevant sentencing factors, there is no merit in the claim that the minimum period of 14 years is manifestly excessive.'