McCoombe v The State of Western Australia **[2016] WASCA 227 (20 December 2016) – Western Australia Supreme Court (Court of Appeal)**

'Aboriginal and Torres Strait Islander people' – 'Aggravated assault occasioning bodily harm' – 'Blaming the victim' – 'Deterrence' – 'People affected by substance misuse' – 'Physical violence and harm' – 'Public protection' – 'Vulnerable groups'

Charge/s: Aggravated assault occasioning bodily harm x 4.

Appeal Type: Appeal against sentence.

Facts: The male appellant, an Indigenous man, and the female partner ('D') had been in a domestic relationship. Counts 1-3 involved the appellant, who was jealous of the victim, punching her, strangling her, striking her with a chair in the back of the head, and striking her several times with a crate. Count 4 occurred when the appellant again became jealous of the victim. He verbally abused her and poured a kettle full of boiling water down her back, causing second and third degree burns. He then punched and kicked her. The appellant prevented the victim seeking medical treatment for several days. The appellant was sentenced to 5 years imprisonment on count 4, 1 year and 2 months imprisonment on counts 1 and 3, and 1 year imprisonment on count 2. The sentences on counts 1 and 4 were to be served cumulatively.

Issue/s: The sentence imposed on count 4 was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. Newnes and Mazza JJA noted the circumstances in which count 4 was committed at [33]:

'The pouring of a kettle of boiling water on D was a particularly cruel and senseless act which was plainly capable of causing very serious injuries. In the spectrum of physical injuries constituting bodily harm sustained by D, they were severe. The offence entailed an abuse of the relationship of trust which existed between the appellant and D. D was in a vulnerable position by reason of the greater physical strength of the appellant and the degree to which he had intimidated her by his past acts of violence: as to which we respectfully adopt Mitchell J's statement in Bropho v Hall [2015] WASC 50 [16], which was approved by this court in Gillespie v The State of Western Australia [2016] WASCA 216 [48]'.

Their Honours referred to the fact that this was ‘part of a pattern of serious and ongoing domestic violence against D’. The appellant had no insight into his offending and sought to justify what he did by blaming the victim. His criminal history was poor and showed that he posed a high risk of further serious violent offending against domestic partners. Retribution, deterrence and public protection were important factors on sentence here (see [34]-[35]).

While acknowledging the severity of the sentence imposed on count 4, Newnes and Mazza JJA concluded that, in light of all the relevant circumstances noted above (including the appellant’s plea of guilty and his criminal history), count 4 was an offence of the ‘utmost gravity of its kind’. The sentence could not be said to be manifestly excessive (see [36]).