Iveson v The State of Western Australia **[2005] WASCA 25 (23 February 2005) – Western Australia Supreme Court (Court of Appeal)**

'Assault occasioning bodily harm' – 'Breach of restraining order' – 'People affected by substance misuse' – 'Physical violence and harm' – 'Throttle' – 'Unlawful detention'

Charge/s: Unlawful detention, assaults occasioning bodily harm (x 2), breach of restraining order.

Appeal type: Appeal against sentence.

Facts: The male applicant struck the female complainant, his de facto partner, across her back with a pole (the first assault). The applicant retrieved a knife from the kitchen but did not use it. The complainant tried to escape out the front door but the applicant prevented this. He began to throttle her (the second assault). The complainant tried to attract attention through the open front door but the applicant shut the door (unlawful detention). The complainant passed out. When she came to, she was again choked by the applicant and lost consciousness. The complainant obtained an interim violence restraining order which the applicant subsequently breached by telephoning her. The sentencing judge imposed an aggregate sentence of 4 years and 10 months' imprisonment.

Issue/s: Some of the grounds of appeal included –

1. The total criminality of the applicant's conduct did not justify the imposition of a cumulative sentence for the second, more serious assault. The conduct of the unlawful detention merged with the throttling of the complainant.
2. The proper application of the totality principle would lead to the conclusion that the aggregate term of 4 years and 10 months was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. First, the individual sentences were well within the discretion of the sentencing judge. The two assaults were of a different character to each other and were further distinguishable from the unlawful detention offence because this did not cause her bodily harm. The decision to order the sentence on the second assault (throttling) to be cumulative was also appropriate in recognition of its particular seriousness and additional criminality (See [25]-[26]). Second, the aggregate term was not manifestly excessive. Although the applicant was a young man, his criminal history was not as bad as it might have been, he was remorseful, and appreciated that his conduct was largely driven by the effects of his drug abuse, the offences were very serious. The second assault was ‘about as serious an example of this offence as it would be possible to find’. The applicant endeavoured to throttle the victim, she lost consciousness twice, he renewed his attack, he persisted in the attack even after she tried to escape, and he obtained a knife (which he did not use, to his credit). Further, he ignored the terms of the violence restraining order (See [31]).