

## ***The State of Western Australia v Yamalulu* [2019] WASCA 6 (14 January 2019) – Western Australia Supreme Court (Court of Appeal)**

‘Aboriginal and torres strait islander people’ – ‘Breaches of protection orders’ – ‘Factors affecting risk’ – ‘People affected by substance misuse’ – ‘People with children’ – ‘Protection order’ – ‘Sentencing considerations’

Charges: Grievous bodily harm x 1.

Appeal type: Appeal against sentence.

Facts: In 2017, the respondent, a Walmajarri man, pleaded guilty to, and was convicted of, one count of unlawfully doing grievous bodily harm in circumstances of aggravation. The respondent was in a family and domestic relationship with the victim and the offending occurred when he was in breach of a violence restraining order which prohibited him from contacting or being within 50 metres of the victim. The respondent and the victim had been in a relationship for approximately three or four years, and had one child aged three at the time of the offence. The relationship had ended due to various incidents of domestic violence. On the night of the offence, the respondent was heavily intoxicated. He found the victim engaging in sex with his brother and subsequently violently assaulted her by throwing her to the ground and jumping on her chest, legs and head. He made attempts to hide from the police and initially gave the police a false name. The victim sustained numerous serious injuries resulting in quadriplegia. The primary judge imposed a sentence of three years and 8 months’ immediate imprisonment.

Issues: It was submitted that the sentencing judge fell into error because the sentence was manifestly inadequate on the following grounds:

- > The maximum penalty for the offence;
- > The exceptionally serious nature of the injuries;
- > The serious nature of the offence and the circumstances in which it was committed;
- > The need for the sentence to reflect specific and general deterrence;
- > The respondent’s personal circumstances; and
- > The requirement that sentencing be consistent with the standards of sentencing set for offending of this nature.

Decision and reasoning: The Court allowed the appeal, set aside the sentence imposed by the sentencing judge and re-sentenced the respondent. The Court found that the respondent committed ‘a frenzied, savage and relentless attack upon a vulnerable, unarmed and defenceless woman’ ([68]). He inflicted serious injuries despite the victim’s repeated pleas for him to stop attacking her. Their Honours also highlighted that the victim was left permanently disabled with limited prospects of improvement. The respondent had a significant prior criminal history including previous convictions for violent offending against the victim. This history of violence indicated that he should not be afforded any leniency on the ground that he was of good character. Mitigating factors included the respondent’s plea of guilty, his remorse and acceptance of responsibility and the adverse effects of his troubled upbringing ([72]). Although the ongoing effects of his childhood deprivation may have diminished his moral culpability, the consequences of his behaviour rendered him a serious threat to women with whom he is or has been in a relationship. Their Honours therefore held that the initial sentence was not merely ‘lenient’ or ‘at the lower end of the available range’, but was unreasonable and plainly unjust. A sentence of seven years six months’ imprisonment was imposed.