***Pedrochi v Brown* [2021] WASC 81 (25 March 2021) – Western Australia Supreme Court**

'Aggravated assault occasioning bodily harm' – 'Application for leave to appeal against sentence' – 'Manifest excess' – 'Strangulation'

Charges: Aggravated assault occasioning bodily harm x 1.

Proceedings: Application for leave to appeal against sentence.

Facts: The male appellant strangled his female partner until it was hard for her to breathe, and punched her in the face, causing significant bleeding from her left eye. He told her: "You did this. I didn't do this." The appellant was convicted, following trial, and sentenced to 2 years and 6 months imprisonment with eligibility for parole.

Grounds of appeal:

1. The sentence was manifestly excessive.
2. The magistrate erred in her calculation of the date on which the appellant's sentence was to be backdated (out by 4 days).

Held: Application for leave to appeal granted on both grounds but appeal only allowed in part to correct a mathematical error in sentencing (vary date of commencement from 21 to 17 August 2019).

Ground 1 alleging manifest excess was rejected. While the sentence was at the top of the range of appropriate sentences, it was not unreasonable or plainly unjust. The offence was extremely serious: "unprovoked, sustained and vicious." Little could be said by way of mitigation, with the applicant's complete lack of remorse or acceptance of responsibility. General deterrence is an important sentencing consideration in family violence offences. In particular at [62]-[63]:

> "It is characteristic of offences of this kind that they involve significant power imbalances (as the offence in this case did), that they are committed behind closed doors (as the offence in this case was) and that they are accompanied by lies and gas lighting (as the offence in this case undoubtedly was).

> These features underscore the need for the courts, in imposing sentences commensurate with the seriousness of the offence in each case and applying all relevant sentencing principles, to send a strong signal that violence of this kind is intolerable and will be dealt with accordingly. The "firming up" of sentences for such violence, referred to in *Duncan v The Queen* [2018] WASCA 154, reflects that need."

In addition, the court emphasised at [64] that:

> "offences involving strangulation are particularly serious. As [the magistrate] said "a case of non-fatal strangulation … is extremely serious" and that "the courts now recognise how serious that action is." In my view, her Honour can here be taken to be referring to the growing appreciation of the particular dangers associated with offences involving strangulation and with the role they play in cases of intimate and family violence. That recognition has, of course, led to legislative action, introducing a specific offence of suffocation or strangulation. That offence was, of course, not in existence at the time of the appellant's offending against Ms Hallam. Nevertheless, as the learned Magistrate recognised, the recognition of the seriousness and danger of non fatal strangulation predated those legislative reforms and was a relevant sentencing consideration."

Ground 2 upheld but only to correct the date from which the sentence commenced from 21 August 2019 to 17 August 2019.