

**Liddy v R**

**29 April 2005  
(BR) Martin CJ, Riley & Southwood JJ  
[2005] NTCCA 4**

Following his pleas of guilty in the Darwin Supreme Court, the appellant was sentenced to imprisonment for a period of 5 years and 6 months with a non-parole period of 3 years and 9 months in relation to two counts of aggravated assault and one count of unlawfully causing grievous harm. The victim in each case was his defacto wife.

Leave to appeal against severity of sentence was granted on 3 November 2004. The sole ground of appeal was that the sentence was manifestly excessive.

As to the first assault, the appellant was at the victim's flat and was working on a bicycle. They were arguing and the appellant swung a piece of wire, taken from the bicycle, around his head in order to frighten the victim. A brake part attached to the end of the wire dislodged and struck the victim on the ribs. As a result of the assault the victim suffered bruising to her ribs. When the victim said she was going to leave, he threatened to kill her. On this count he was sentenced to 6 months.

As to the second assault, the appellant and his victim had been together during the course of the day. The appellant verbally abused the victim and as a consequence she attempted to phone Dawn House to arrange emergency accommodation for herself. The appellant threw a chair at her and she put up her hands in order to protect herself. He then pushed her to the ground and said, '*You fucking whore, get fucking outside 'cause I'm going to flog you*'. The victim was frightened and did as she was told. Once outside she took the opportunity to escape, and with the assistance of neighbours, Police were called. As a result of the assault the victim suffered lumps to her head, a sore left arm and bruising to her body. On this count he was sentenced to 6 months.

Following this incident the appellant was served with an interim restraining order issued under the *Domestic Violence Act*. It directed that he not enter or approach the victim's home, not assault or cause personal injury to the victim, and not approach the victim directly or indirectly.

The third offence occurred within hours of the service of the restraining order.

The appellant contacted his brother from the Police Station and asked him to drive to an address in Bakewell where he located the victim sitting on a chair in the back garden. She was there with other people. Notwithstanding the events of the previous day, and in a direct and deliberate breach of the domestic violence order that had recently been served upon him, the appellant walked directly to the victim and said, '*Put a restraining order on me you cunt*', and punched her with a closed fist to the left cheek. At the time of the assault she was still sitting in her chair. She suffered a fractured cheekbone, left intraorbital nerve damage with the numbness to the left upper teeth and upper lip, a left zygomatic maxillary complex fracture with the fractures of the anterior medial and posterior walls of the antrum, depressed zygomatic arch fracture and a displaced left orbital floor fracture. She underwent surgery to repair those injuries. The injuries were extensive.

In the course of his record of interview the appellant acknowledged that he had an anger management problem and that it was just his way of keeping the victim with him. On this count he was sentenced to 5 years. The sentence of 5 years was made cumulative on the two concurrent sentences of 6 months.

The plea was entered to an ex-officio indictment. The appellant had prior convictions for unlawful carnal knowledge, rape and assault.

The court unanimously dismissed the appeal noting the following aggravating features:

- On each occasion the victim was vulnerable and incapable of defending herself against the appellant.
- The threats that accompanied two of the assaults were extreme and made in circumstances where the victim understood that the appellant was willing and able to carry them out.
- At the time of the final assault, the appellant had been served with a domestic violence restraining order. He had spent time in Police custody and therefore had the opportunity to reflect upon his position but then proceeded to commit the most severe of the assaults. He did so in direct defiance of the restraining order. His conduct was premeditated and designed to punish the victim for having obtained an order against him. He attacked her in circumstances where she had no opportunity to defend herself and where she was seated at the time. The conduct of the appellant manifested a continuing attitude of disobedience to the law.
- The victim's injuries were severe and continued to affect her.

The sentencing judge had apparently discounted the sentence in the order of 27.5% for the guilty plea. Accordingly, the sentencing judge's starting point was in the order of 6 years and 10 months. Riley J who delivered the judgement of the court, was of the view that the actual sentence imposed (5 years and 6 months) was *towards the top of the available range* but that it could not be said that *the sentence was outside the proper range of the sentencing discretion*.