

**Wesley v R**

**27 April 2005  
(BR) Martin CJ, Riley & Southwood JJ  
[2005] NTCCA 7**

This was an appeal against the severity of a head sentence of 3 years and 6 months imprisonment and a non-parole period of 21 months following the appellant's plea of guilty in the Darwin Supreme Court to one count of unlawfully causing grievous harm.

The victim had been the appellant's defacto wife. They had three children together. In January 2004 the victim obtained a non contact restraining order against the appellant. Several weeks later as the victim was catching a taxi the appellant approached her and got in the taxi with her. They spoke about getting back together again and having the restraining order lifted. On the way to the victim's residence, they purchased alcohol which they then proceeded to consume. An argument developed about the victim leaving the house to get cigarettes. The appellant punched the victim on the head from behind and then continued to punch her on and about her head after she had fallen to the ground.

The victim sustained fractures to both sides of her jaw which caused a displacement of her teeth. The fractures were treated surgically and screws were put in place to hold the jaw in position. The victim was hospitalised for 5 days and suffered considerable pain, bruising and swelling. In her Victim Impact Statement she reported sometimes having a tingly sensation in her bottom lip and at times felt like she was dribbling.

The appellant, aged 25 years, had a criminal record dating from 1994 including assault (4 months suspended detention) and assault police (3 months suspended imprisonment).

Leave to appeal was granted on 3 March 2005 on the ground that the sentence was manifestly excessive.

The Court of Criminal Appeal unanimously dismissed the appeal.

The court said that the sentence of 3 years and 6 months was *undoubtedly a heavy sentence* noting that if the sentencing judge had allowed a reduction in the order of 20% to 25% for the early plea of guilty, the starting point for the sentencing judge would have been in the order of 4½ years or a little higher. The court was of the view that while the sentence was at the top of the proper range of the sentencing discretion, it could not be said that that the sentence was outside that range. Similar observations were made in respect of the non-parole period.