CITATION:	*Dhununba v Firth* [2018] NTSC 60
PARTIES:	DHUNUNBA, Wesley v FIRTH, Justin
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	APPEAL from LOCAL COURT exercising Territory jurisdiction
FILE NO:	LCA 35 of 2018 (21807832) LCA 36 of 2018 (21817699)
DELIVERED ON:	27 August 2018
DELIVERED AT:	Darwin
HEARING DATE:	27 August 2018
JUDGMENT OF:	Grant CJ

CATCHWORDS:

CRIMINAL LAW – PROPERTY OFFENCES – JUDGMENT AND PUNISHMENT

Whether sentences manifestly excessive – whether cumulation lead to manifestly excessive total effective sentence – appeal dismissed.

Local Court (Criminal Procedure) Act (NT) s 163
Sentencing Act (NT) s 51

Bara v The Queen [2016] NTCCA 5, *Carroll v The Queen* (2011) 29 NTLR 106, *Emitja v The Queen* [2016] NTCCA 4, *Mill v The Queen* (1988) 166 CLR 59, *Morrow v The Queen* [2013] NTCCA 7, *Nguyen v The Queen* [2007] NSWCCA 14, referred to.

REPRESENTATION:

Counsel:

Appellant:	In person
Respondent:	A Hilder-Achurch

Solicitors:

Appellant:	Not applicable
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	B
Judgment ID Number:	GRA1820
Number of pages:	6

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Dhununba v Firth [2018] NTSC 60
LCA 35 of 2018 (21807832)
LCA 36 of 2018 (21817699)

BETWEEN:

WESLEY DHUNUNBA
Appellant

AND:

JUSTIN FIRTH
Respondent

CORAM: GRANT CJ

EX TEMPORE REASONS FOR JUDGMENT

(Delivered 27 August 2018)

[1] These are two related appeals against sentence brought pursuant to s 163 of the *Local Court (Criminal Procedure) Act* (NT).

[2] On 9 May 2018, the appellant pleaded guilty to and was convicted by the Local Court of one count of aggravated assault in file number 21817699 and one count of assaulting a person in the performance of her work duties in file number 21807832. The maximum penalty for the first offence was imprisonment for five years and the maximum penalty for the second offence was imprisonment for three years.

[3] The sentencing judge imposed a penalty of imprisonment for five months for the assault on the worker and imprisonment for three months for the aggravated assault, with two months of that second sentence to be served cumulatively on the first. The total effective period of imprisonment was seven months.

[4] On 6 June 2018 the appellant filed notices of appeal in respect of both sentences contending that they were manifestly excessive, both individually and in their total effect. The appellant is self-represented in the appeals.

[5] The assault against the worker took place first in time. On 15 February 2018 the appellant's son was receiving treatment at the Royal Darwin Hospital. The appellant was in attendance on that day, but at some point in the evening he went to an unknown location where he consumed alcohol and became intoxicated. He then returned in that state to the ward to which his son had been admitted.

[6] The victim was a 28-year-old female nurse on duty on that ward. At approximately nine o'clock that evening she heard the appellant yelling loudly and swearing on the ward. When she went to check on the cause of the disturbance, the appellant began advancing towards the victim accusing her of only working there for money and not caring about the patients. He then stood very close to the victim and shoved her to the left side of her chest while continuing to yell at her. He then raised his

left hand as if to strike the victim. Quite understandably, the victim was terrified by this conduct. Security were called and ultimately police attended and arrested the appellant.

[7] A little more than two months later, on the afternoon of 19 April 2018, the appellant was in the vicinity of the Rapid Creek Shops in an intoxicated state. He approached the female victim while she was sitting at a bus stop and began to argue with her. Then, without warning, he slapped the victim to the left side of her head with his open hand. The force of the blow was such that the victim would have fallen over had she had not been able to steady herself with her right hand. Entirely by chance, the assault was witnessed by police driving past the location. The defendant was arrested and subsequently charged with aggravated assault.

[8] Against that background, the appellant is now 39 years of age. At the time of this offending the appellant had a criminal history which included numerous convictions for assault. Those convictions include assaulting a member of the police force in 2015, aggravated assault on a female in 2013, assaulting members of the police force in 2009, 2010 and 2011, aggravated assault causing harm to the victim in 2008, assaulting a member of the police force in 2006, and aggravated assault on a female using a weapon in 2006. The offender has a litany of other convictions which, although not directly relevant to the offences which

are the subject of these appeals, demonstrate a general disregard for the law and for orders made by the courts of this Territory.

[9] When imposing the sentence for these two present offences the sentencing judge made a number of observations. In relation to the first assault in time, it was accepted that the appellant was no doubt agitated and distressed by the fact that his son was being treated in hospital. However, the court did not accept that those circumstances in any way excused the appellant's subsequent conduct in leaving the hospital, becoming intoxicated, and coming back and behaving in a threatening and violent manner towards a young nurse.

[10] The sentencing judge adopted a starting point of imprisonment for six months and reduced that sentence to take account of the appellant's plea of guilty. Although it did not form part of the sentencing remarks, it is a matter of some notoriety that health workers are frequently exposed to violence and threats of violence in the course of their employment, and that prevalence requires the sentences imposed by the courts in such circumstances to include appropriate components in satisfaction of the purposes of punishment, denunciation and deterrence.

[11] In relation to the second assault in time, the sentencing judge observed that it took place both while the appellant was on bail and in breach of the bail condition that he not consume alcohol. He approached the

victim without invitation. He provoked an argument with her, and then hit her without warning. As the sentencing judge observed, the appellant's behaviour was that of "a drunk and a bully" wandering the streets and looking to cause trouble. For that offence, the sentencing judge adopted a starting point of imprisonment for four months reduced to three months to take account of the appellant's early plea of guilty.

[12] The sentencing judge then gave some express consideration to the total sentence. The order for cumulation was made having regard to the fact that there was no circumstantial relationship between the two separate episodes of offending, but that the principle of totality required some degree of concurrency. The sentencing judge declined to make any order suspending sentence having regard to the appellant's lengthy criminal history and poor prospects of rehabilitation. No complaint is made in relation to that aspect of the sentencing disposition.

[13] The principles which govern appeals on the ground that a sentence is manifestly excessive are well known.[1] The presumption is that there is no error. An appellate court interferes only if it is shown that the sentencing judge committed error in acting on a wrong principle or in misunderstanding or wrongly assessing some salient feature of the evidence. In the present case, the individual sentences reflect moderation in the exercise of the sentencing discretion.

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1 See, for example, *Bara v The Queen* [2016] NTCCA 5 at [75]-[76]; *Emitja v The Queen* [2016] NTCCA 4 at [39]-[40]; and *Morrow v The Queen* [2013] NTCCA 7 at [36].

[14] That leaves the question of cumulation and the total effective period of imprisonment imposed across both sentences. The extent to which a term of imprisonment imposed for one offence should be served cumulatively on or concurrently with a term of imprisonment imposed for another offence is a discretionary determination.[2] The operative question is whether the sentence imposed for one offence encompasses in whole or in part the criminality of the other offence or offences.[3]

[15] There was no temporal or circumstantial nexus between the offences in this case, and it was necessary for the sentencing judge to cumulate the individual sentences appropriately in order to accord appropriate weight to the criminality inherent in each act and the harm done to the separate victims. The extent to which the sentences were cumulated in this case did not fall outside the legitimate breadth of the sentencing discretion, and nor did that cumulation result in a total sentence disproportionate to the total criminality of the appellant's conduct.[4]

Disposition

[16] For those reasons, the appeals are dismissed.

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[2] *Sentencing Act*, s 51; *Carroll v The Queen* [2011] NTCCA 6; 29 NTLR 106 at [42] and [44].

[3] *Nguyen v R* [2007] NSWCCA 14 at [12].

[4] *Mill v The Queen* (1988) 166 CLR 59 at 63.