

CITATION: *Marsh v Parkanyi* [2026] NTSC 26

PARTIES: MARSH, Levii John

v

PARKANYI, Paul Gene

TITLE OF COURT: SUPREME COURT OF THE NORTHERN
TERRITORY

JURISDICTION: APPEAL from LOCAL COURT exercising
Territory jurisdiction

FILE NO: LCA 19 of 2025 (22430989)

DELIVERED: 8 April 2026

HEARING DATE: 31 March 2026

JUDGMENT OF: Brownhill J

REPRESENTATION:

Counsel:

Appellant: M Thomas

Respondent: K Thomas

Solicitors:

Appellant: Bryson Kelly Legal

Respondent: Office of the Director of Public
Prosecutions

Judgment category classification: C

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

Marsh v Parkanyi [2026] NTSC 26
No. LCA 19 of 2025 (22430989)

BETWEEN:

LEVII JOHN MARSH
Appellant

AND:

PAUL GENE PARKANYI
Respondent

CORAM: BROWNHILL J

REASONS FOR DECISION

(Delivered 8 April 2026)

- [1] The issue in this appeal is whether the sentence imposed by the Local Court was infected by specific error. At the time the Local Court dealt with the appellant for charges of aggravated assault and recklessly endangering serious harm, he was in custody serving a sentence of imprisonment imposed by the Supreme Court for earlier drug offending. The Supreme Court had imposed a suspended sentence and the appellant was due for release under that sentence some weeks after being dealt with by the Local Court. The sentence imposed by the Local Court was partially cumulative upon the Supreme Court sentence and the Local Court fixed a non-parole period for the total of the terms of imprisonment imposed by both the Supreme Court and the Local

Court. The respondent accepted that this comprised an appellable error which required the sentence imposed by the Local Court to be quashed and permitted this Court to re-sentence the appellant for the Local Court charges.

Supreme Court sentence

- [2] In order to understand the issue in this appeal, it is necessary to refer to the sentence imposed by the Supreme Court.
- [3] On 11 April 2025, the Supreme Court sentenced the appellant in relation to four charges, namely one count of supplying a commercial quantity of cocaine (Count 1), one count of supplying a commercial quantity of cannabis (Count 2), one count of possessing \$25,870 in cash knowing it was obtained from supplying a commercial quantity of a Schedule 1 drug (Count 3) and one count of engaging in conduct that resulted in a breach of the condition of bail that the appellant not contact MG (charge on complaint).
- [4] Counts 1, 2 and 3 were committed on 3 May 2024. The charge on complaint was committed on 3 November 2024 (the date of the offending dealt with by the Local Court).
- [5] The appellant was 20 years old at the time of the drug offending. He lived with his girlfriend and his co-offender, Michael Gilmore ('MG'). Prior to 3 May 2024, the appellant and MG came into possession of

commercial quantities of cannabis and cocaine, they supplied those drugs to unknown persons in the Darwin region for commercial gain and received the cash proceeds. In late April 2024, the appellant and MG parked a car by the side of the road near some bushland, took out a small calibre sawn-off firearm and fired a number of rounds into the bush. This conduct was caught on Police CCTV. When the footage was reviewed by Police, they located the address at which the car was registered, being the appellant's home, and obtained a warrant to search the address for firearms and ammunition. On 3 May 2024, when Police attended to execute the warrant, they smelled cannabis coming from inside, so they obtained a warrant to search for drugs. The Police found the drugs and cash the subject of these charges. The appellant was arrested on 10 May 2024. He was subsequently granted bail.

- [6] The appellant was sentenced by the Supreme Court to imprisonment for two years and three months on Count 1; imprisonment for two years and three months on Count 2, to be served wholly concurrently with the sentence on Count 1; imprisonment for two years and three months on Count 3, with six months of the sentence on Count 3 to be served cumulatively on the sentences on Counts 1 and 2; and imprisonment for three months on the charge on complaint, to be served wholly concurrently with the sentence on Count 3. That yielded a total sentence of imprisonment for two years and nine months, backdated to 9 April 2025 and suspended after the appellant had served six months,

with conditions that he be supervised by a probation and parole officer and not consume or possess dangerous drugs, with testing.

- [7] When the appellant was dealt with by the Local Court, he was in custody serving the sentence imposed by the Supreme Court under which he was due for release by suspension of the sentence on 8 October 2025.

Charges in the Local Court

- [8] On 3 September 2025, in the Local Court, the appellant pleaded guilty to the following charges:

- (a) recklessly endangering serious harm to a person who will be referred to as ‘JA’, contrary to s 174D of the *Criminal Code Act* (NT) (‘*Criminal Code*’) (Count 1); and
- (b) unlawful assault of a person who will be referred to as ‘MC’, contrary to s 188 of the *Criminal Code*, with the circumstances of aggravation that the appellant caused harm to the victim and the victim was unable to effectually defend himself (Count 3).

Circumstances of the offending

- [9] The facts agreed on the plea were as follows.

- [10] There were three co-offenders, being the appellant, MG and another man, Mason Jones ('MJ'). The victims of the offending were JA, MC and another man, who will be referred to as 'DH'.
- [11] JA and MC were known to the co-offenders MG and MJ.
- [12] On 13 May 2024, the appellant was granted bail by the Supreme Court in relation to the drug offending. A condition of that bail was that he not approach or contact MG. Being in MG's company on this evening was the conduct in breach of bail the subject of the charge on complaint dealt with by the Supreme Court.
- [13] At around 2.30am on 3 November 2024, the appellant and the co-offenders were loitering at the rear of a nightclub in Darwin. A witness overheard them loudly saying they wanted to fight people. JA and MC and another person who will be referred to as 'EC' left the nightclub and walked along Shadforth Lane. As they passed the appellant, the two co-offenders and another man whose identity is unknown, EC overheard them saying: 'We need to go kill some cunts'. JA, MC and EC did not engage with the three offenders and the unknown male. The three offenders followed closely behind JA, MC and EC. At the same time, DH and another person who will be referred to as 'IG' were walking in the opposite direction.
- [14] In an unprovoked attack, MG pushed DH to his chest and punched him to the head. MG then grabbed DH from behind with two arms around

his neck and attempted to put him in a headlock. At risk of being choked, DH flipped MG over his shoulders to the ground. Using the weight of his body, MG brought DH to the ground with him. As DH was restrained by MG, MJ punched him to the head and tried to kick him.

[15] Whilst DH was on the ground and defenceless, the unknown male tried to choke him from behind and punched him multiple times to the head. The appellant and MJ stood over DH in an intimidating manner allowing MG to stand up. This attack on DH was not the subject of any charge against the appellant.

[16] IG called Police on 000.

[17] MC saw what happened to DH and walked over to try and de-escalate the assault, which gave DH time to stand up and walk over to MG.

[18] IG and the unknown male had a short conversation with JA. Without warning and from behind, the appellant punched JA to the side of his head, rendering him immediately unconscious. JA fell to the ground, hitting his head and chin on the edge of the concrete footpath, causing a serious laceration to his chin. That is the offending the subject of Count 1.

[19] MC tried to intervene to prevent any further assault. MG, the appellant, MJ and the unknown male then violently attacked MC, punching and

kicking him multiple times to the head, face and body. MC fell to the ground and the appellant punched him multiple times to the head whilst MJ repeatedly kicked him to the head and body. That is the offending the subject of Count 3.

[20] The three offenders then walked away, failing to render any assistance to JA, who remained unconscious on the ground. That showed a complete disregard for JA's welfare.

[21] Minutes after the assault, the three offenders were caught on CCTV, with the appellant boasting about the attack on JA by mimicking the punch and JA falling to the ground unconscious.

[22] EC contacted another person, who will be referred to as 'HM', who was waiting in the queue at another nightclub. EC told HM that JA and MC had been assaulted. HM ran to their aid. A short time later, HM returned to the nightclub and had a conversation with the appellant, who made admissions to assaulting JA.

[23] JA was taken to hospital by ambulance for medical treatment. As a result of the assault, he was unconscious for about one minute, sustained a serious laceration to his chin which required six stitches, and grazes to his head and body. Days after the assault, JA was still in pain and struggling to eat due to his injuries. He had to have time off work and suffered from headaches.

[24] As a result of the assault, MC sustained cuts and bruises to his head and body.

[25] The appellant was arrested at 2:58pm on 8 November 2024. On 4 December 2024, he was granted bail on both the Supreme Court file and the Local Court file. On 11 April 2025, he was dealt with by the Supreme Court as set out above.

Local Court sentence

[26] The Local Court received the agreed facts (Exhibit P1), the sentencing remarks from the Supreme Court relating to the drug offending (Exhibit P2), the pre-sentence report obtained by the Supreme Court (Exhibit P3), the appellant's criminal history which included the Supreme Court sentence (Exhibit P4), photographs of the injuries to JA and MC (Exhibit P5), and a victim impact statement from JA (Exhibit P6).

[27] Submissions were made on behalf of the appellant about his personal circumstances, youth and prospects of rehabilitation, asking that the appellant be released 'when possible'.

[28] Submissions were made about the maximum penalty for Count 1. The prosecutor was 'unsure' that it was imprisonment for ten years. The appellant's counsel submitted that it was.

[29] The maximum penalty for Count 1 was not imprisonment for ten years.

The maximum penalty was imprisonment for seven years because none of the circumstances of aggravation referred to in s 174D of the *Criminal Code* and defined in s 174G applied to the offence.

[30] The prosecutor submitted that because of the seriousness of the offending, the appellant should be sentenced to a term of imprisonment which was, in effect, cumulative on the Supreme Court sentence. The prosecutor submitted that s 59 of the *Sentencing Act 1995* (NT) required that the term of imprisonment imposed by the Supreme Court 'should be served until the point it is suspended, which was 9 October 2025, at which point the sentence of imprisonment for this offending should be imposed, whether as a partially suspended sentence or for the non-parole period.' The submission was that s 59 required the Supreme Court custodial period to be served first.

[31] The Local Court indicated an intention to make the Local Court sentence partially cumulative on the Supreme Court sentence, and asked questions of counsel about the effect and operation of s 59 of the *Sentencing Act*.

[32] The prosecutor submitted that the principle of parity did not apply to the sentences imposed on the co-offenders MG and MJ. The prosecutor informed the Local Court that both co-offenders pleaded guilty to two aggravated assaults (presumably of DH and MC) and failure to render

assistance (presumably to JA), on ‘reduced facts’. They were each sentenced to an aggregate sentence of imprisonment for one year and six months. MG’s sentence was suspended after six months and MJ’s sentence was suspended after three months. The prosecutor did not know about their criminal histories, their ages or why they received suspended sentences.

[33] The Local Court asked questions of counsel about the Local Court’s power to ‘fix a new release date’ for a sentence imposed by the Supreme Court. Counsel for the appellant sought time to consider the issue. The Local Court adjourned the matter to give the issue further consideration and asked counsel to provide further assistance if they were able.

[34] When the Local Court reconvened on 12 September 2025, the Local Court was told the parties had reached an agreed position on the law. The Local Court asked about the maximum penalty for Count 1 and was told, correctly, that it was imprisonment for seven years.

[35] The parties provided the Local Court with a copy of the decision of this Court in *Bush v Fairweather*.¹

[36] The Local Court indicated to the parties a preliminary intention to sentence the appellant to imprisonment which was partially cumulative on the sentence imposed by the Supreme Court and a view, based on

¹ [2024] NTSC 91 (*‘Bush v Fairweather’*).

the decision in *Bush v Fairweather* at [49] that pursuant to s 53(2) of the *Sentencing Act*, the Local Court could then impose a non-parole period in respect of the total period of imprisonment comprised by the Supreme Court and Local Court sentences. The parties did not demur from that approach.

[37] The Local Court also asked the prosecutor if there was a minimum non-parole period of 50% of the head sentence and was told there was ‘[b]ut with appropriate reasons that can change’.

[38] The prosecutor indicated that s 59 of the *Sentencing Act* applied and made a submission to the effect that the Local Court could decide not to impose a non-parole period, i.e. to impose a straight sentence, such that the appellant was released on the release date under the Supreme Court sentence.

[39] The Local Court rejected that submission on the basis that there was no power in the Local Court ‘to interfere with the Supreme Court sentence, unless the order of sentences and the powers are dictated to under the *Sentencing Act*.’

[40] In sentencing, the Local Court noted the seriousness of the offending, which was described as ‘gratuitous’ and ‘inexplicable’ violence in a public place by men in company, and the fact that it was committed whilst the appellant was on bail for other offending. The appellant’s youth and prospects for rehabilitation were referred to, and the Local

Court stated an intention not to impose a crushing sentence. The Local Court said the sentence would not be suspended because the offending in breach of the Supreme Court bail indicated that the appellant would not comply with a suspended sentence. A non-parole period was said to be the only suitable sentencing option.

[41] The Local Court convicted the appellant and imposed an aggregate sentence of imprisonment for 18 months, which had been reduced by 25% on account of the appellant's guilty plea. Twelve months of the Local Court sentence was to be cumulative on the Supreme Court sentence. Taking the Supreme Court and the Local Court sentences together, the Local Court pronounced a total effective sentence of three years and nine months backdated to 9 April 2025 with a non-parole period of one year and ten months. The Local Court said that the non-parole period was 'the minimum non-parole period that [it could] fix under s 53(2)' of the *Sentencing Act*.

Grounds of appeal

[42] Pursuant to s 163 of the *Local Court (Criminal Procedure) Act* (NT), the appellant appealed against the sentence imposed by the Local Court on the ground that it is manifestly excessive ('ground 1').

[43] The appellant sought leave to add two further grounds of appeal which were not identified in his notices of appeal, namely that:

- (a) the sentence was inconsistent with the principle of parity having regard to the sentences imposed on the appellant's co-offenders ('proposed ground 2'); and
- (b) the non-parole period imposed by the Local Court was not in accordance with the relevant provisions of the *Sentencing Act 1995* (NT) ('*Sentencing Act*') ('proposed ground 3').

[44] The respondent argued that the Local Court sentence was not manifestly excessive, opposed the grant of leave to add proposed ground 2 or, alternatively, argued that it had no merit, and accepted that proposed ground 3 was made out.

Proposed ground 3: Fixing the non-parole period

[45] The respondent accepted that the Local Court erred in fixing the non-parole period, namely by: (a) calculating the non-parole period on the basis of the total of the sentences imposed by the Supreme Court and the Local Court, which gave rise to a non-parole period of one year and 10 months; and (b) by proceeding under the misapprehension that a 50% non-parole period was mandatory, when that was not the case and a shorter non-parole period was open to the Local Court as long as reasons were given for adopting that course.

[46] I accept that the Local Court erred in sentencing the appellant.

[47] The error followed from the imposition of a sentence of imprisonment of one year and six months which was to end one year after the Supreme Court sentence. The Supreme Court sentence is to expire on 8 January 2028. One year after that is 8 January 2029. To end at that time, the Local Court sentence must commence on 9 July 2027. The appellant was entitled to be released from custody under the Supreme Court suspended sentence on 8 October 2025, and he was not required by the Local Court sentence to be imprisoned until 9 July 2027. The effect of the non-parole period imposed by the Local Court was to keep the appellant in custody for a period of one year and nine months when the sentences imposed upon him did not authorise that custody.

[48] That outcome is not one required or permitted by the *Sentencing Act*. It is obvious that a non-parole period imposed as part of a sentence cannot authorise incarceration of an offender which the sentence or sentences to imprisonment to which the offender is subject does or do not provide for.

[49] The sentence having been infected by that material error, the parties were agreed that leave to add proposed ground 3 should be granted, the appeal should be allowed on ground 3 and the sentence imposed by the Local Court quashed.

[50] Ultimately, the parties were also agreed that, pursuant to s 177(2)(c) of the *Local Court (Civil Procedure) Act*, this Court should substitute the

order which ought to have been made by the Local Court by re-sentencing the appellant.

[51] This makes it unnecessary to consider appeal ground 1 and proposed ground 2.

Re-sentencing the appellant

[52] The circumstances of the offending have been recited above.

[53] The appellant is now 22 years old. He was 20 years old at the time of the offending.

[54] The appellant's criminal history comprises:

- (a) a conviction for possession of a trafficable quantity of cannabis committed in 2022;
- (b) convictions for the three drug offences and the breach of bail for which the Supreme Court sentence was imposed; and
- (c) convictions for three offences, namely possessing or using a prohibited weapon, possessing ammunition without a licence and failing to meet storage requirements, committed on 3 May 2024.

[55] The latter three offences relate to items found during the search of the appellant's home following the Police review of the CCTV footage showing the appellant and MG firing a sawn-off firearm into the bush referred to in the Supreme Court sentencing remarks. The appellant

was dealt with by the Local Court for those three offences on 15 May 2025 by way of a fine of \$1,000.

[56] As to his background and personal circumstances, the appellant was born in Port Hedland. He is the only child from the relationship of his parents. They separated when he was three years old and his parenting was shared between them. They both moved to Darwin in 2006 after they had separated. The appellant has seven half siblings and good relationships with four of them. He lived with his sister when he left his mother's home at age 16.

[57] The appellant went to school in Darwin, up to Year 10, when he left to undertake a Certificate II in structural engineering, which he completed. He started working in 2020 and was working in road construction at the time of the drug offending. He also worked whilst on bail. His employer is supportive and there is work available to the appellant upon his release.

[58] The appellant started drinking alcohol and using cannabis at age 15, and he was drinking to excess and smoking cannabis daily by age 18. He used cannabis to help with feelings of anxiety.

[59] The appellant has a long-term partner who remains supportive of him and a young child. On his release, he wants to regain his employment and support his family.

[60] The appellant pleaded guilty to the offences. The Crown accepts it was an early plea. The Local Court afforded a 25% discount to the appellant on account of his guilty plea, including remorse. I see no warrant to depart from that. I will reduce the sentences I would otherwise impose for these offences by approximately 25%.

[61] The maximum penalties for the offences are imprisonment for seven years for Count 1 and imprisonment for five years for Count 3.

[62] The offending was committed whilst the appellant was on bail facing a number of very serious drug charges in the Supreme Court. In breach of a condition of that bail, he was in the company of MG. The offending involved gratuitous violence committed in public by four men on two other men. The comments of the group of four overheard by witnesses indicate that the group was intent on violent behaviour that night, which demonstrates a degree of pre-meditation, although there is no evidence that the intention was to target anyone in particular. Consistently with those comments, the offending in Count 1 was preceded by apparently random violence by the two co-offenders against a third man. The appellant was not involved in, nor charged with, the violence against DH but that conduct was consistent with the violent intention of the group.

[63] Very shortly after the violence against DH occurred, the appellant approached the victim JA from behind and, without warning, punched

him to the right side of his head, rendering him instantly unconscious.

JA fell to the ground, hitting his head and chin on the edge of the concrete footpath. He was unconscious for around one minute and suffered a laceration to his chin requiring six stitches, as well as grazes to his head and body. Days after the assault, he was still in pain, struggling to eat and suffering from headaches.

[64] It is publicly well-known that a single punch to a person can cause them very serious harm. A punch to the head without warning and from behind involves an obvious and considerable risk of causing serious harm to a person. I find that the appellant's conduct was highly reckless as to causing such harm.

[65] When MC intervened to prevent further assault, the appellant and the three others attacked him, punching and kicking him multiple times to the head, face and body. He fell to the ground and the appellant punched him again multiple times to the head, while MJ repeatedly kicked him to the head and body. The unknown male then dragged MC about four metres, punching and kicking him, then punched him repeatedly after he again fell to the ground. MC suffered cuts and bruises to his head and body.

[66] The group then walked away, leaving JA lying unconscious on the ground, showing a callous disregard for his welfare. The appellant later boasted about what he had done to JA.

[67] In his victim impact statement dated 2 September 2025, JA said that he felt frustrated at struggling to eat and had lost weight due to the pain in his jaw. He said he remembered waking up from being unconscious with blood all over him, and that memory was still in his mind. He struggled with going out alone to do activities of daily living and he found it hard to enjoy social events with friends due to constantly watching his surroundings and having flashbacks of the assault. He lost one week of wages due to his inability to work.

[68] In relation to Count 1, I note that was an instance of ‘one-on-one’ violence in that none of the co-offenders applied physical force to the victim, no weapon was used, it was a single blow and the physical injuries sustained by the victim were not long-lasting or life-threatening. Despite the risk of serious harm, the victim’s physical injuries were reasonably minor.

[69] In relation to Count 3, I note that no weapon was used and the victim’s injuries were minor.

[70] I consider both offences to be below the mid-range of seriousness for such offences.

[71] Violence by young men against other men in public places is prevalent. General deterrence is an important factor in this sentencing exercise.

[72] I take into account the appellant's youth at the time of the offending, which mitigates his moral culpability to a degree and makes his rehabilitation an important factor. I note that the ameliorating effect of youth is tempered to a degree by the seriousness of the offending.

[73] The appellant has no history of violent offending and no entrenched pattern of offending or breaching the conditions of court orders. He has a supportive family, employment on his release and appears motivated to change his behaviours.

[74] The respondent submitted that the drug offending and the breaching of bail by this offending effectively denied any significant prospects of rehabilitation in the appellant such that the Court could have no confidence that he was willing or able to comply with the requirements of a conditional release.

[75] I do not accept that. Taking proper account of the appellant's youth, noting the pro-social avenues and supports available to him and acknowledging that he has now spent a substantial period of time in custody, under more onerous conditions than would ordinarily be the case as a consequence of being housed in the Watch House for some weeks and overcrowding and understaffing in the prison, I consider that his prospects of rehabilitation are reasonable.

[76] The respondent relied upon seven comparative sentences imposed by this Court for the offence of recklessly endangering serious harm in

support of its submission that the seriousness of the offending warranted the imposition of a non-parole period rather than a suspended sentence.

[77] In *R v Walker*,² the offender and three other men had been drinking and socialising with the victim, who they did not previously know. Outside the venue, there was a confrontation. The heavily intoxicated victim walked away, was chased, pushed over and the four men then kicked, punched and stomped on the victim repeatedly, knocking him to the ground a number of times as he tried to escape. One of the group stole things from the victim's pockets. The victim yelled for help. The group dragged him into some nearby bushes and assaulted him some more. A number of bystanders tried to intervene, but the assault continued. The victim suffered tenderness and grazes to his back, shoulder, knees and legs, a fracture of his collarbone and a comminuted fracture of his big toe. The victim reported substantial and ongoing emotional and psychological effects upon him. The offender was middle aged, with a lengthy criminal history, including three aggravated assaults, an aggravated robbery and unlawfully causing serious harm. He also had numerous breaches of the conditions of bail, bonds, a suspended sentence, a home detention order and parole. He had a dysfunctional childhood with exposure to violence and alcohol abuse. After a 20%

² (SCC 22420967, 2 June 2025).

discount for the guilty plea, the offender was sentenced to imprisonment for four years, with a non-parole period of 12 months.

[78] In *R v Ebaterinja*,³ after drinking with the victim, who was his domestic partner, at the beach, the offender became jealous and angry towards the victim. She walked away. In breach of a domestic violence order, and despite the presence of the victim's family nearby, the offender followed her, grabbed her and forced her head and body under the water, holding her down with his knee on her back. She could not breathe and tried to fight back. The offender pulled her out of the water and she managed to get away, coughing and vomiting water. The offending was part of a pattern of domestic violence against the victim. The offender was 38 years old. He had a longstanding history of alcohol abuse and a lengthy criminal history, including unlawfully causing serious harm, eight aggravated assaults, with seven of those against females, and had been out of jail for one week before committing this offending. He also had a history of breaching suspended sentences and domestic violence orders. He had a dysfunctional childhood with exposure to alcohol abuse and limited access to education. After a 20% discount for the guilty plea, the offender was sentenced to imprisonment for four years, with a non-parole period of three years.

3 (SCC 22412147, 28 October 2025).

[79] In *R v King*,⁴ the offender was intoxicated and with the victim, his domestic partner. He became angry with her about jealousy. In breach of a domestic violence order and without warning, he repeatedly punched the victim to the face and head, and forcibly kicked her to the head, face, back and ribs while wearing work boots, ignoring her pleas to him to stop. The following day, the offender assaulted the victim again without warning, punching her multiple times to her ribs and back. Each of the assaults was the subject of a charge of recklessly endangering serious harm. When the victim called for an ambulance, the offender told her to say she had fallen over to explain the presence of her extensive injuries. The victim suffered multiple rib fractures on both sides and a fracture to her spine. The offender was 57 years old. No criminal history is referred to. After a discount of 25% for the plea, the offender was sentenced to imprisonment for three years on each count, with 18 months of the sentence on the second count cumulative on the sentence on the first count, yielding a total sentence of imprisonment for four years and six months, with a non-parole period of three years.

[80] In *R v Williams*,⁵ the victim, the offender's domestic partner, was in a public park with her son and another person. In breach of a suspended sentence for offending against the same victim, the offender walked up

4 (SCC 22323116, 10 April 2025).

5 (SCC 22307550, 28 September 2023).

to her and kicked her to the front of her head, causing her to fall backwards from the wall she was sitting on. The offender stood over the victim and punched her twice to the head before walking away leaving the victim lying on the ground. The offender then returned to the victim, dragged her by her clothes from the ground and threw her onto the concrete pathway. The offender then stomped on the victim's head seven times, rendering the victim unconscious. He walked away leaving her lying unconscious and with her shirt pulled up and breast exposed. The victim was unconscious for around five minutes and suffered a cut to her scalp, a bruise on her head and a black eye. The offender was 24 years old and had a lengthy criminal history including violence against the victim and others. He also had a history of failing to comply with community-based orders. The offender had a dysfunctional childhood with exposure to domestic and other violence, alcohol abuse and social dysfunction. After a discount of 20% for the guilty plea, the offender was sentenced to imprisonment for four years with a non-parole period of two years.

[81] In *R v Robbo*,⁶ the victim, who was unknown to the offender, was leaving a shopping centre when he had a verbal exchange with a man standing with the offender and a co-offender. As the victim walked to his car, the man and co-offender followed him. As the man stood in front of the victim to confront him, the co-offender struck the victim

6 (SCC 22217483, 15 May 2023) (*'Robbo'*).

from behind, hitting him hard to the throat with his forearm. The victim fell to the ground having difficulty breathing and swallowing. The offender then ran to the victim who was lying on the ground and punched him hard to the face, causing the victim to feel dazed. Bystanders approached and the offender moved back. From the blow to the throat, the victim suffered multiple small laryngeal fractures and a small deep bruise. He had a ‘permanent voice injury’. From the punch, the victim suffered a fractured eye socket and a fractured nose. He had nasal breathing difficulties and may have required surgery. The offender was 23 years old and had a substantial criminal history with multiple convictions for violence and multiple instances of breaching court orders. The offender had a dysfunctional childhood with exposure to domestic violence and alcohol abuse. After a 20% discount for the guilty plea, the offender was sentenced to imprisonment for two years and nine months, with a non-parole period of one year and six months.

[82] In *R v Miskin*,⁷ in the Darwin CBD, the victim, who was unknown to the offender and his two co-offenders, approached the offender’s aunty with the belief that she had earlier assaulted his wife. The victim tried to punch the aunty. The offender and co-offender intervened, with the co-offender punching the victim multiple times to his head, causing him to fall to the ground, and continuing to punch him as he was on the ground. The offender then joined in and punched the victim several

7 (SCC 22106345, 14 September 2022) (*Miskin*).

times to the head, then stomped on his head a number of times. The aunty also kicked the victim to the head as he lay on the ground. The aunty then tried to stop any further assault on the victim, but the offender again punched him to the head. The three offenders left the victim lying unconscious on the ground and went back to a nightclub. The sentencing Judge accepted that this offending was in ‘excessive defence’ of the offender’s aunty. The victim suffered a bleed to his brain which required observation in hospital and outpatient neurological appointments thereafter. The victim also suffered very damaging emotional effects. The offender was 18 years old at the time of the offending. As a youth, he had a prior criminal history including recklessly endangering life and recklessly endangering serious harm, which were committed in the context of a police pursuit. He had no prior convictions for ‘intentional violent offending’. He had two instances of failing to comply with court orders. He had obtained employment and was engaging in pro-social activities whilst on bail. After a 25% discount for the guilty plea, the offender was sentenced to imprisonment for three years, wholly suspended.

[83] In *R v Talbot*,⁸ the aunty referred to in *Miskin* was dealt with for her part in the offending against the victim, on the same charge. The offender kicked the victim to the head as he lay on the ground and continued to assault him. She also prevented other people from

8 (SCC 22106793, 12 October 2022) (*Talbot*).

rendering him assistance before moving away. The offender was 22 years old and had a dysfunctional childhood involving domestic violence at the hands of her mother, exposure to drug and alcohol abuse and homelessness. She had three prior convictions for violent offending as an adult, as well as convictions for assault as a youth. She had a poor history of compliance with court orders. After a 20% discount for the guilty plea, the offender was sentenced to imprisonment for two years and eight months, suspended after four months with an operational period of three years.

[84] Five of these seven cases involved protracted instances of violence with numerous inflictions of force, some inflicted by multiple offenders. Five of these seven cases involved victims who sustained serious injuries. Three of these seven cases involved domestic violence committed in breach of a domestic violence order or suspended sentence for similar offending. On those bases, these ‘comparative’ sentences involved more serious offending than the appellant’s offending and are of little assistance.

[85] The two most comparable of the seven sentences referred to by the respondent are *Robbo* and *Talbot* because the two assaults there involved single applications of force by the young offenders otherwise than in a context of domestic violence. In both of those cases, the victims sustained more serious injuries than the victim of Count 1 and the offender in *Robbo* did not have a prior record of intentional

violence. The sentences imposed there were quite similar, with starting points (before the discount for the guilty plea) of imprisonment for three years and four or five months.

[86] Five of the seven comparative sentences imposed non-parole periods on offenders of varying ages who had lengthy criminal histories involving violence and non-compliance with court orders. Two of the seven sentences were suspended either wholly or after a brief period in custody. The two suspended sentences were not the two cases in which the victim's injuries were minor. The two suspended sentences were imposed on the young offenders, including one who had a criminal history of violent offending.

[87] Consequently, these sentences do not support the proposition that the seriousness of the appellant's offending warrants the imposition of a non-parole period rather than a suspended sentence.

[88] In *Whitehurst v The Queen*,⁹ Riley CJ (Mildren and Martin JJ agreeing) held (at [24]) that the decision to fix a non-parole period or grant a suspended sentence may give rise to considerations of parity with other offenders, but the issue is one of what is appropriate for the particular offender then before the court in the particular circumstances of both the offender and the offending.

⁹ [2011] NTCCA 11 ('*Whitehurst*'). These observations were also cited with approval in *Tran v R* [2019] NTCCA 12 at [39].

[89] In *Whitehurst*, Riley CJ held (at [28]) that in choosing whether to proceed by way of a suspended sentence or a non-parole period, the sentencing judge must consider many things, including any relevant legislative provisions, the nature of the offending, the minimum period of imprisonment which must be actually served to reflect the seriousness of the offending, and the personal circumstances of the offender including any prospects for rehabilitation. Consideration of the latter two factors is likely to involve determining how any prospects for rehabilitation may be addressed and enhanced; whether there is a need for supervision and, if so, the nature of that supervision; the existence of, and the nature of, any support mechanisms available to the offender in the community; the identification of impediments and risks to rehabilitation; and so on.

[90] Further (at [29]), the question of whether to impose a non-parole period or to suspend a sentence must be answered in light of all of the circumstances surrounding both the offence and the offender, and there is no expectation that for a particular type of offence a suspended sentence would result.

[91] Taking that approach, I do not consider the offending on either count to be of such seriousness that a suspended sentence is inappropriate in all the circumstances of this case.

[92] The Court received a report pursuant to s 103 of the *Sentencing Act* about the appellant's suitability for supervision. That report said that the appellant demonstrated a good level of insight into his offending and did not seek to minimise his responsibility for the offending. The appellant denied requiring interventions to address alcohol or drug use. The report found the appellant suitable for supervision with conditions recommended for his management.

[93] I note the sentences imposed on the co-offenders for their part in the violence inflicted by the group on that night. Only one of the three charges for which they were sentenced coincided with the two charges against the appellant. I have no information about what the facts agreed on their pleas were, or their personal circumstances. Importantly, as regards Count 1, neither of them applied any physical force to JA, and there is no suggestion of any joint criminal responsibility for that offending. They were charged with different offences on the basis of their different conduct in relation to JA. Furthermore, I have no information about what their sentences were in respect of Count 3 or, the sentence that would have been imposed for Count 3 if a separate sentence had been imposed.¹⁰

[94] The aggregate sentence imposed by the Local Court for the two offences was imprisonment for one year and six months. The starting

10 Section 52(4) of the *Sentencing Act* provides that a court that imposes an aggregate sentence of imprisonment must indicate to the guilty person the sentence that would have been imposed for each offence if separate sentences were imposed instead of an aggregate sentence.

point (before the discount for the guilty plea) was therefore two years for both offences. As I have said, the co-offenders both received the same sentence as the appellant for their offending. That comprised: (a) their involvement with the appellant in the aggravated assault against MC (Count 3), in which there was little to distinguish the conduct of each of them; (b) the aggravated assault against DH, which was less serious offending than the appellant's recklessly endangering serious harm against JA (Count 1); and (c) failing to render assistance to JA, for which the appellant was not charged.

[95] Even accepting that sentences imposed by the Local Court for offences dealt with summarily are generally lower than those imposed by the Supreme Court, the sentence imposed by the Local Court does not appear to appropriately recognise the seriousness of the offending in Count 1.

[96] In all the circumstances, I consider that the appropriate starting point for Count 1 is imprisonment for two years. After the discount of 25% for the guilty plea, I intend to impose a sentence of imprisonment for one year and six months for that offence.

[97] In respect of Count 3, I consider that the appropriate starting point is imprisonment for one year. After the discount of 25% for the guilty plea, I intend to impose a sentence of imprisonment for nine months.

[98] The two offences were committed in a single episode of offending, but they were different offences committed against different victims. I do not accept that the criminality of the offending the subject of Count 3 would be wholly captured by the sentence for Count 1. Consequently, I intend to impose a degree of accumulation on the sentence for Count 1, and a degree of concurrency to reflect the principle of totality. Four months of the sentence on Count 3 will be cumulative on the sentence on Count 1.

[99] That yields a total sentence of imprisonment for one year and ten months.

[100] I agree with the Local Court, and it was not submitted to the contrary, that the sentence imposed for this offending must require the appellant to spend additional time in custody from the custodial time required under the Supreme Court sentence. The proper way to achieve that outcome is to provide for the appellant's release from custody under this sentence on a date after he was to be released on the Supreme Court suspended sentence. I consider that the appellant should serve an additional period of eight months under this sentence before being entitled to be released under the suspended sentence.

[101] In other words, this sentence will be backdated to commence on the date the appellant became entitled for release under the Supreme Court

sentence. The sentence will be backdated to 8 October 2025 and suspended after the appellant has served eight months.

[102] The suspension will be on the conditions set out in the supervision report.

[103] I will impose an operational period of one year and two months from the date of release during which the appellant must not commit another offence punishable by imprisonment.

Disposition

[104] For the above reasons, the Court makes the following orders:

- (1) Leave is granted to add proposed ground 3 to the notices of appeal.
- (2) The appeal is allowed on ground 3.
- (3) The sentence imposed by the Local Court is quashed.
- (4) The appellant is re-sentenced as follows:

The appellant is convicted on both Counts.

For Count 1, the appellant is sentenced to imprisonment for 1 year and 6 months.

For Count 3, the appellant is sentenced to imprisonment for 9 months.

4 months of the sentence on Count 3 is cumulative on Count 1.

That gives a total sentence of imprisonment for 1 year and 10 months.

The sentence is backdated to commence on 8 October 2025.

The sentence is suspended after the appellant has served 8 months, on the following conditions:

- (a) The appellant must be of good behaviour.
- (b) The appellant must be under the supervision of a probation and parole officer and must obey all reasonable directions from a probation and parole officer.
- (c) If directed by a probation and parole officer, the appellant must have attached an approved monitoring device, and must comply with any directions given in relation thereto.
- (d) If directed by a probation and parole officer, the appellant must submit to a curfew.
- (e) If directed by a probation and parole officer, the appellant must enter into a residential rehabilitation program or any other program for which he is found suitable, and complete that program.

- (f) The appellant must participate in assessment, counselling and/or treatment as directed by a probation and parole officer.
- (g) The appellant must not purchase, possess or consume alcohol and must submit to testing as directed by a probation and parole officer or a police officer.
- (h) The appellant must not purchase, possess or consume a dangerous drug, and must submit to testing as directed by a probation and parole officer.

I impose an operational period of one year and two months from the date of release.
