

## Cause GBH With Intent to Cause GBH

s.33(1)(b) (NSW) Crimes Act

s 33(1)(b) Cause GBH with intent to cause GBH

Maximum Penalty: 25 years

Standard non-parole period: 7 years (offences committed on or after 1.2.2003)

Commenced: 15.2.2008

| NAME<br>(age if known)                                    | OFFENCE   | PLEA        | SENTENCE   | APPEAL                      | WEAPON               | RECORD  | SUMMARY  |
|---|---|-------------|--|-----------------------------|----------------------|---|--|
| <b>Miria</b><br><a href="#">[2009] NSWCCA 68</a>          | s.33(1)(b)  | PG<br>(25%) | 2y<br>suspended                                      | Crown AA<br>4y<br>NPP 2y    | Beer glass           | assaults                                      | <b>SNPP 7 years</b><br>Hit victim in back of head with beer glass at hotel - level of grievous bodily harm not high - lower than mid-range.  |
| <b>Holten</b><br><a href="#">[2009] NSWCCA 234</a>        | s.33(1)(b)  | PG<br>(25%) | 6y<br>NPP 3y 6m                                      | AD                          | Punch and bite       | Lengthy including numerous violence offences. | <b>SNPP 7 years</b><br>16y male victim approached offender concerned about female in offender's company – offender threw punch at victim – struggle commenced – police approached and observed offender to bite victim's ear - permanent disfigurement to ear - mid range. Intoxicated at time - alcohol addiction.  |
| <b>Stunden</b><br>(19)<br><a href="#">[2011] NSWCCA 8</a> | s.33(1)(b)<br><br>Larceny<br><br>Sched:<br>Possess cannabis | PG<br>(25%) | 3y<br>NPP 2y<br>Periodic Detention<br><br>\$500 fine | Crown AA<br>4y<br>NPP 2y 6m | Punching and kicking | Breached bond for assault and property damage | <b>SNPP 7y</b><br>Altercation with 16y outside high school – upset over break up with girlfriend who had commenced relationship with victim – sustained punching and kicking - element of provocation that victim summoned offender to scene and started fight by throwing his bike at offender – serious facial and eye injuries - effectively blind in one eye - only marginally less than mid-range<br>Rehabilitation |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

| NAME<br>(age if known)   | OFFENCE   | PLEA        | SENTENCE   | APPEAL  | WEAPON                               | RECORD  | SUMMARY  |
|--|---|-------------|--|---|--------------------------------------|---|--|
| <b>JM</b><br>(17)<br><a href="#">[2012] NSWCCA 83</a>  | s.33(1)(b)<br><br>Affray                                      | PG<br>(10%) | 7y<br>NPP 4y<br><br>FT 12m<br>(concurrent)                           | AA<br>5y<br>NPP 3y<br><br>FT 12m<br>(concurrent)  | Punching<br>and kicking              | Nil   | Street fight after party between youths – kicked and punched victim and bashed head against bitumen – element of pre-meditation – serious long-term injuries - involved in assault on second victim – intoxicated and responding to earlier racial slur<br>Strict bail conditions – Aboriginal - remorse – excellent prospects of rehabilitation   |
| <b>AM</b><br>(16)<br><a href="#">[2012] NSWCCA 203</a>   | s.33(1)(b)  | PG<br>(25%) | 7y<br>NPP 3y   | AD  | Punching,<br>kicking and<br>stomping | Nil   | Unprovoked attack upon innocent stranger – victim punched repeatedly to face – prone victim then kicked and stomped on head – suffered traumatic brain injury – permanent cognitive impairment<br>Affected by alcohol - dysfunctional background – strong subjective features  |
| <b>Bugmy</b><br>(31)<br><a href="#">[2012] NSWCCA 223</a><br><br><a href="#">[2014] NSWCCA 322</a> | s.33(1)(b)<br><br>2 x s.60A(1)<br>(assault prison<br>officer) | PG<br>(25%) | 6y<br>NPP 4y<br><br>FT 8m<br><br><b>Total:</b><br>6y 3m<br>NPP 4y 3m | After High Court<br>appeal matter<br>returned<br><br>Crown AD<br>(in exercise of<br>discretion) | Pool balls                           | Lengthy   | <b>SNPP 7 years</b><br>While on remand in prison became angry at visiting hours – threatened prison officer – threw pool balls at two officers – threw pool ball at third officer striking him in eye – loss of site, PTSD and loss of career – spontaneous offence<br>Aboriginal with difficult childhood – mental disorder   |
| <b>Galbraith</b><br>(27)<br><a href="#">[2013] NSWSC 284</a><br>Harrison J                         | s.33(1)(b)<br><br>Affray                                      | VG          | 3y<br>NPP 2y<br><br>FT 6m<br>(concurrent)                            |   | Punch                                | Nil   | <b>SNPP 7 years</b><br>Party in street where offender's brother lived caused some disruption – offender and third brother came to house then all left in car – came across three victims who had attended party – offender hit one victim to head who fell unconscious to ground – friend of victim killed when he ran into oncoming car trying to escape – unplanned – unprovoked vicious attack.<br>Prior good character – rehabilitation prospects – remorse. |
| <b>Duncombe</b><br>(21)<br><a href="#">[2013] NSWCCA 271</a>                                       | s.33(1)(b)<br><br>Sched:<br>Affray                            | PG<br>(10%) | 8y<br>NPP 5y   | AD  | Sledge-<br>hammer                    | AOABH,<br>damage<br>property, BES<br>- on parole. | <b>SNPP 7 years</b><br>Hit victim on back and to head and face with sledgehammer – altercation between neighbours – large group of persons confronting one another – victim suffered fractures and injuries confining him to hospital for 9 days.<br>Drug use – limited intellectual capacity  |

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|---|---------------------------|-------------------------|---|-----------------------------|-------------------------------|---|---|
| <b>Tuuta</b><br>(19)<br><a href="#">[2014] NSWCCA 40</a>                | s.33(1)(b)                | VG                      | 6y<br>NPP 3y 7m 6d  | Crown AA<br>6y 8m<br>NPP 5y | Punch                         | Breached parole for similar offence – record for violence | <b>SNPP 7 years</b><br>Punched female acquaintance waiting for taxi several times to face – unprovoked and unexpected attack – fractured jaw<br>Drug abuse  |
| <b>Peters</b><br><a href="#">[2014] NSWCCA 49</a>                       | s.33(1)(b)<br><br>s.35(4) | VG                      | 10y<br>NPP 6y 6m<br><br>3y<br>NPP 2y<br><br><u>Total:</u><br>11y<br>NPP 7y 6m | AD                          | Pipe and knife                |   | <b>SNPP 7 years</b><br>Struck victim working on rural property from behind with pipe – struggled on ground striking victim to head several times - threatened to cut throat then used knife to saw off part of victim's index and little fingers – mid range - planning                   |
| <b>Lolesio</b><br><a href="#">[2014] NSWCCA 219</a>                     | 2 x s.33(1)(b)            | VG                      | 4y<br>NPP 2y  | Crown AA<br>7y<br>NPP 4y    | Assault                       | juvenile  | <b>SNPP 7 years</b><br>Assaulted 6w baby on two occasions 7 days apart – caused 14 fractures to legs, ankles, feet and ribs – injuries to arms – haematoma caused by severe shaking<br>Low intellectual capacity – suffering stress – good prospects of rehabilitation                    |
| <b>Dacey</b><br>(27)<br><a href="#">[2014] NSWSC 1452</a><br>RA Hulme J | s.33(1)(b)                | VG<br>(at murder trial) | 7y<br>NPP 5y  |                             | Knife                         | Lengthy   | <b>SNPP 7 years</b><br>Stabbed victim during argument over drugs and money – victim died a few days later – in company of offender's brother – barely knew victim - spontaneous offence - slightly below mid-range.<br>Institutionalised – drug addiction – low prospects rehabilitation. |
| <b>De Wet</b><br><a href="#">[2015] NSWCCA 23</a>                       | s.33(1)(b)<br><br>s.86(3) | PG<br>(10%)             | 9y<br>NPP 6y<br><br>FT 4y<br><br><u>Total:</u><br>10y<br>NPP 7y               | AD                          | Punching, kicking and choking | Lengthy – including violence                              | <b>SNPP 7 years</b><br>Leader of group of males who kidnapped victim from home – sustained assault – kicked, punched and choked – offender bit off part of ear<br>Drug abuse  |

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|---|----------------------------------|-------------|--|--------|--|--------------------------------|--|
| <b>Thornton</b><br>(39)<br><a href="#">[2015] NSWCCA 94</a>   | s.33(1)(b)<br><br>AOABH          | PG<br>(10%) | 6y 4m<br>NPP 4y<br><br>FT 1y<br><br><u>Total:</u><br>7y 4m<br>NPP 5y | AD     | Punching<br>and kicking                        | record<br>includes<br>violence | <b>SNPP 7 years</b><br>Unprovoked punch to head of male victim at nightclub – caused unconsciousness – found victim's brother making phone call in foyer and punched him to head – with co-offender continued to punch and kick second victim to unconsciousness and caused fracture to side of face – intoxicated<br>Violent childhood – suffering PTSD |
| <b>Bajouri</b><br>(30)<br><a href="#">[2016] NSWCCA 20</a>    | s.33(1)(b)<br><br>Common assault | PG<br>(10%) | 8y<br>NPP 5y<br><br>FT 3m<br>(concurrent)                            | AD     | Punching<br>and<br>stomping                    | Violence<br>offences           | <b>SNPP 7 years</b><br>Punched victim in face – while victim lying on ground stomped on face – suffered fractured facial bones - required internal fixation with plate and screw which will remain in place permanently<br>Ex-professional footballer – involved in car accident which ruined his career – alcohol abuse - depression                    |
| <b>Wainwright</b><br>(32)<br><a href="#">[2016] NSWCCA 19</a> | s.33(1)(b)                       | PG<br>(10%) | 8y 1m<br>NPP 5y  | AD     | Pushing and<br>stomping –<br>terracotta<br>pot | Malicious<br>wounding          | <b>SNPP 7 years</b><br>Pushed female friend, who fell and was knocked unconscious – stomped and broke terracotta pot on head - suffered significant injuries - appalling savage sustained attack - repeated assaults upon defenceless young woman lying unconscious. Difficult upbringing.   |
| <b>Ngatamariki</b><br><a href="#">[2016] NSWCCA 155</a>       | s.33(1)(b)                       | VG          | 5y<br>NPP 3y   | AD     | Punching                                       | AOABH (same<br>victim)         | <b>SNPP 7 years</b><br>Assaulted female partner – punched victim to head causing five separate facial fractures – serious injuries.<br>Remorse – unplanned.  |
| <b>Campbell</b><br><a href="#">[2016] NSWCCA 170</a>          | s.33(1)(b)                       | PG<br>(10%) | 7y 2m<br>NPP 5y  | AD     | Punching<br>and striking<br>with elbow         |                                | <b>SNPP 7 years</b><br>Assaulted male victim at hotel whilst out drinking – acquainted with each other through Thai boxing – struck victim to face using elbow with great force - used Thai boxing technique – punched victim lying on ground – no provocation<br>Alcohol issues.  |

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|---|---|----------------------------------|--|---|---------------------------|--|--|
| <b>Dong, M</b><br>(21)                                      | s.33(1)(b)  | PG<br>(10%)                      | 2y<br>suspended  | Crown AD<br>(exercise of<br>discretion)   | Fence<br>palings          | Nil  | <b>SNPP 7 years</b><br>Assaulted older male victim - victim had been arguing with and assaulting females in families of offenders – offenders came to talk with victim – victim attacked offenders with stick – offenders responded by attacking victim with fence palings that were lying nearby - returned to victim and recommenced attack – victim unconscious, suffered fractures to head and jawbone requiring surgery – sustained attack – not premeditated.<br>Each offender of good character – students – from troubled overseas country – rehabilitation<br>Discretion to dismiss because each offender showed successful rehabilitation in 3 years since offence |
| <b>Marial</b><br>(19)                                       | s.33(1)(b)  | PG<br>(10%)                      | 2y<br>suspended  |   |                           | nil  |  |
| <b>Dong, A</b><br>(19)                                      | s.33(1)(b)  | PG<br>(10%)                      | 2y<br>suspended  |   |                           | nil  |  |
| <b>Mathiang</b><br>(20)<br><a href="#">[2016] CCA 195</a>   | s.33(1)(b)  | PG<br>(10%)                      | 2y<br>suspended  |   |                           | nil  |  |
| <b>Medcalf</b><br>(31)<br><a href="#">[2016] NSWCCA 209</a> | s.33(1)(b)<br><br>s.111(2) –<br>aggravated<br>enter with intent | PG<br>(25%)                      | 12y<br>NPP 8y 9m<br><br>7y<br>NPP 5y 3m<br><br><u>Total:</u><br>13y<br>NPP 9y 8m | AA<br>9y 9m<br>NPP 7y 3m<br><br>6y<br>NPP 4y 6m<br><br><u>Total:</u><br>10y 9m<br>NPP 8y 3m | Assault                   | nil  | <b>SNPP 7 years</b><br>Entered premises with electrical tape – struck female cleaner twice to side of head causing unconsciousness – placed second female cleaner in headlock and punched until unconscious – wrapped electrical tape around mouth of one victim – higher than mid-range<br>Prior good character – genuine remorse   |
| <b>Benson</b><br><a href="#">[2016] NSWCCA 267</a>          | s.33(1)(b)  | VG                               | 5y 6m<br>NPP 3y  | AD  | knife                     |  | <b>SNPP 7 years</b><br>Female stabbed former husband with 17cm bladed kitchen knife while he was assisting with pool – unprovoked attack   |
| <b>AB</b><br>(20)<br><a href="#">[2017] NSWCCA 88</a>       | s.33(1)(b)  | PG<br>(20% -<br>25%<br>combined) | 6y 8m<br>NPP 3y  | Crown AA<br>6y 8m<br>NPP 4y 4m  | Baseball bat<br>– kicking | Breach bond<br>for affray –<br>other minor<br>offences | <b>SNPP 7 years</b><br>Assaulted ex-boyfriend of wife after learning of affair – in company with co-offender in park using baseball bat and kicking victim in head – permanent and significant physical and cognitive injuries - planned offence – well above mid-range<br>Born in Iraq – traumatic childhood – some psychiatric conditions  |

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|---|--|-------------|---|--|-------------------------------|--------|--|
| <b>Nolan</b><br><a href="#">[2017] NSWCCA 91</a>          | s.33(1)(b)   | PG<br>(10%) | 12y 6m<br>NPP 8y 6m   | Crown AA<br>15y 3m<br>NPP 11y 6m   | Assault                       |        | <b>SNPP 7 years</b><br>Assaulted 7 month old nephew of de-facto – suffered brain injury resulting in catastrophic permanent debilitating and life-threatening conditions - breach of trust - offence not planned.<br>In intellectual disability range and adaptive skills in mild intellectual disability range - prior good character - unlikely to re-offend - prospects of rehabilitation – remorse.  |
| <b>Fadel</b><br>(20)<br><a href="#">[2017] NSWCCA 134</a> | s.33(1)(b)<br><br>Intimidate                                   | VG          | 6y 8m<br>NPP 4y 2m<br><br>FT 6m<br><br><u>Total:</u><br>6y 10m<br>NPP 4y 4m | AD   | Kick to head                  | Nil    | <b>SNPP 7 years</b><br>Violent affray broke out between neighbours on front lawn – history of disagreement – made threat to shoot member of neighbouring family – put work boots on and kicked second member in head – just below mid-range<br>Difficult childhood – prior good character  |
| <b>Smith</b><br><a href="#">[2017] NSWCCA 175</a>         | s.33(1)(b)<br><br>Sched:<br>Common assault                     | PG<br>(15%) | 4y 3m<br>NPP 2y 1m  | AD   | Kicked with boots             | nil    | <b>SNPP 7 years</b><br>Female – forcibly kicked ex-husband in the head 3-4 times while he was on floor in hotel during altercation – altercation started by offender's current partner who attacked and punched victim and his friend – extended scuffle – offender resisted attempts by security staff to restrain her – kicked security guard in arm – spontaneous offence – towards lower end of mid-range – angry at lack of contact with daughters<br>Effect of depression on imprisonment – prior good character |
| <b>Fouani</b><br><a href="#">[2018] NSWCCA 230</a>        | s.33(1)(b)<br><br>Recruit child to carry out criminal activity | PG          | 12y<br>NPP 9y<br><br>FT 5y<br><br><u>Total:</u><br>14y<br>NPP 10y           | Crown AA<br>16y<br>NPP 2y<br><br>FT 5y<br><br><u>Total:</u><br>18y<br>NPP 13y 6m | Petrol and set alight / burns |        | <b>SNPP 7 years</b><br>Began relationship with female victim – offender upset victim would not stop working as a prostitute – recruited MF to pour petrol on victim and set her alight – planned offence – suffered severe burns to 45% of body and face - recruitment of MF more serious and morally culpable by use of threats against MF's family and pistol - upper level of seriousness - sexual jealousy<br>Absence of remorse or contrition   |

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|---|--|--------------------|---|--------|---------|--|---|
| <b>Tohifolau</b><br>(20)<br><a href="#">[2018] NSWCCA 283</a> | s.33(1)(b)                                     | PG<br>(5%)         | 12y 4m<br>NPP 9y                          | AD     | Assault | includes violence  | <b>SNPP 7 years</b><br>Entered cell in correctional centre and assaulted prisoner – victim suffered permanent brain danger and will require assistance for life – no motive – senseless violence<br>No remorse  |
| <b>Anderson</b><br><a href="#">[2019] NSWCCA 256</a>          | s.33(1)(b)<br><br>Steal property from dwelling | VG<br><br>PG (25%) | 15y<br>NPP 11y<br><br>FT 15m (concurrent) | AD     | Assault | lengthy record including significant violence – breached conditional liberty | <b>SNPP 7 years</b><br>Argued with friend in his home over debt – punched victim unconscious – continued assaulted by punching and stomping on motionless victim on floor – left home taking victim's property – spontaneous offence – no weapon – caused catastrophic and lifelong injuries – upper range of seriousness<br>Suffering chronic paranoid schizophrenic condition although not linked to offence – moderate to high risk of re-offending – guarded prospects of rehabilitation<br>On appeal: sentence within range in view of nature of injuries and savagery of attack |
| <b>Horvath</b><br>(24)<br><a href="#">[2019] NSWCCA 285</a>   | s.33(1)(b)                                     | PG<br>(10%)        | 7y<br>NPP 4y                              | AD     | Car     | nil serious  | <b>SNPP 7 years</b><br>Victim visiting offender's neighbour – history of disputes between offender's family and neighbours – after initial confrontation drove at victim standing in street and struck at low speed – reversed car then accelerated to strike victim and run over his legs – reversed car back over victim's foot – deliberate acts – not spontaneous – no provocation – in presence of victim's step daughter – mid-range<br>Remorse and some insight – good prospects of rehabilitation – deprived childhood but not <i>Bugmy</i> level                             |
| <b>Field</b><br>(40)<br><a href="#">[2020] NSWCCA 105</a>     | s.33(1)(b)                                     | VG                 | 6y<br>NPP 4y                              | AD     | Knife   | Drugs.<br>Damage property, larceny, drive disqualified.<br>On bond.          | <b>SNPP 7 years</b><br>Excessive self-defence - Victim punched applicant as applicant in relationship with victim's girlfriend – applicant stabbed victim in stomach.<br>Spontaneous – below mid-range - remorse<br>Aboriginal background – dysfunctional violent childhood - drug addiction.   |

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|---|---|-------------|------------------|--------------------|-------------------|--|--|
| <b>Coats</b><br>(44)<br><a href="#">[2020] NSWSC 1236</a><br>Campbell J | s.33(1)(b)  | PG<br>(25%) | 6y<br>NPP 4y     |                    | Mattock<br>handle | Assault,<br>AOABH,<br>cultivate<br>prohibited<br>plant, BES. On<br>bail. | <b>SNPP 7 years</b><br>Struck single blow with mattock handle to victim's head – victim died – acquitted of attempted murder-acted in response to seeing friend badly injured after fight between friend and victim – under influence of drugs - intent of inflicting really serious injury - intent formed spontaneously.<br>Troubled upbringing - drug addiction.        |
| <b>Noonan</b><br><a href="#">[2020] NSWCCA 346</a>                      | s.33(1)(b)<br><br>Sched:<br>4 offences<br><br>s.166<br>3 offences | PG<br>(25%) | 10y 6m<br>NPP 7y | AA<br>9y<br>NPP 6y | Hatchet.          | Nil.   | <b>SNPP 7 years</b><br>Under care of aunt and uncle - struck uncle a number of times in head, abdomen and leg areas with a hatchet - victim suffered serious injuries including traumatic brain injury.<br>Deprived upbringing – schizophrenia – psychotic episodes.<br>CCA: Sentence manifestly excessive in circumstances of mental illness and broader subjective case. |

Last Updated: December 2020