

## Recklessly Cause GBH in Company

### s.35(1) (NSW) Crimes Act

s 35 (1) In company of another person or persons causes grievous bodily harm to any person reckless as to causing actual bodily harm

**Maximum Penalty:** 14 years

**Standard non-parole period:** 5 years (where conviction entered or guilty plea accepted on or after 1.1.2008)

**Commenced:** 27.9.2007

**Wording substituted:** 21.6.2012

NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	WEAPON	RECORD	SUMMARY
Farrawell-Smith (23) <a href="#">[2010] NSWCCA 144</a>	s.35(1)	PG (40% combined)	20m (suspended)	Crown AD (in exercise of discretion)	Shovel	Offences including assault – breached conditional liberty	<b>SNPP – 5 years</b> Approached group of youths with several other offenders with intention to fight – two victims assaulted by co-offender with shovel – bashed to head – another co-offender angered by earlier confrontation Supporting partner and child – remorse – good prospects of rehabilitation
	s.35(3)	PG (50% combined)	12m (suspended)				
Kemp (18) <a href="#">[2012] NSWCCA 281</a>	s.35(1)	PG	4y 6m NPP 2y 6m	AD	Assault	breach parole for violence offences	<b>SNPP – 5 years</b> Two victims waiting at train station approached by group of males and punched and kicked – offender ran to one victim and punched in head causing him to strike head on concrete platform and suffer brain injury
	Affray		FT 12m (concurrent)				

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NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	WEAPON	RECORD	SUMMARY
<b>Mansour</b>	s.35(1)	VG (at s.33 trial – 10% for offer)	4y 18d NPP 2y 9d	AD	Assault	breached bond	<b>SNPP – 5 years</b> Sustained attack on male stranger in night club by offenders and third male – punched and kicked and stomped while prone on floor – unprovoked attack – injury at lower end of scale M – youth - remorse – good prospects of rehabilitation H – remorse – good prospects of rehabilitation
	Affray		3y NPP 1y 6m (concurrent)				
	Sched: Possess restricted sub						
<b>Hughes</b> <a href="#">[2013] NSWCCA 35</a>	s.35(1)	VG (at s.33 trial)	4y 6m NPP 2y 3m			breached bond	
	Affray		3y 4m NPP 1y 8m (concurrent)				
<b>Davis</b> <a href="#">[2018] NSWCCA 67</a>	s.35(1)	PG (15%)	3y 2m NPP 1y	AD	Assault	Nil	<b>SNPP – 5 years</b> With 2 co-offenders – offender instigated assault upon first victim who was previously in relationship with offender's partner – single blow with clenched fist to head knocking victim unconscious, striking head on tiled floor – struck second victim to head causing him to fall backwards - serious injuries including broken jaw, stroke following hospitalisation and blindness in left eye, ongoing headaches, on blood thinner for life, cognitive impairment including short term memory issues - unprovoked violent attack - unplanned – intoxicated Industrious young man who had grown up in considerable difficulties.
	s.35(4)		2y 6m NPP 1y  <u>Total:</u> 4y 2m NPP 2y				

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NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	WEAPON	RECORD	SUMMARY
<b>Fenech</b> <a href="#">[2018] NSWCCA 160</a>	s.35(1)	VG at trial for s.33	3y NPP 2y	AD	Assault		<b>SNPP – 5 years</b> One of eight members of bikie club involved in assault on sergeant at arms – victim assaulted at night on footpath outside workshop – taken inside and handcuffed with cable ties – assault continuing when police arrived – offender in wheelchair and did not participate in assault – liable to joint criminal enterprise and brought cable ties and pick axe handle for use in assault – could not exclude did not intend less than grievous bodily harm but considered possibility someone would intentionally or recklessly act to cause actual bodily harm
<b>Brown</b> (33) <a href="#">[2020] NSWCCA 132</a>	s.35(1)  AOABH	PG (10%)	<u>Indicative:</u> 6y 3m NPP 4y  3y  <u>Aggregate:</u> 7y 3m NPP 4y 10m	AA <u>Indicative:</u> 5y 6m NPP 3y 6m  2y  <u>Aggregate:</u> 6y NPP 3y 10m	Scissors	Includes property – assault – custody of knife	<b>SNPP – 5 years</b> Asked by female manager of motel to leave after confrontation between partner and manager – returned with partner and another male in earlier hours of morning – female manager kicked and punched by co-offenders – joint criminal enterprise - stabbed partner of manager in back three times causing puncture of lung Difficult childhood – early drug use – offending uncharacteristic and influenced by drug use – genuine remorse – absconded while on bail On appeal – sentence unreasonable and plainly unjust

Last updated: July 2020

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