

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 |
|----|--|------------------------|--|--|--|---------|--|---|
| 1. | Farrawell-Smith (23) [2010] NSWCCA 144 | s.35(1) s.35(3) | PG (40% combined) PG (50% combined) | 20m (suspended) 12m (suspended) | Crown AD (in exercise of discretion) | Shovel | Offences including assault – breached conditional liberty | SNPP – 5 years 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 |
| 2. | Kemp (18) [2012] NSWCCA 281 | s.35(1) Affray | PG | 4y 6m NPP 2y 6m FT 12m (concurrent) | AD | Assault | breach parole for violence offences | SNPP – 5 years 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 |

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| 3. | Mansour | s.35(1) Affray Sched: Possess restricted sub | VG (at s.33 trial – 10% for offer) | 4y 18d NPP 2y 9d 3y NPP 1y 6m (concurrent) | AD | Assault | breached bond | SNPP – 5 years 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 |
| | Hughes [2013] NSWCCA 35 | s.35(1) Affray | VG (at s.33 trial) | 4y 6m NPP 2y 3m 3y 4m NPP 1y 8m (concurrent) | | | breached bond | |
| 4. | Davis [2018] NSWCCA 67 | s.35(1) s.35(4) | PG (15%) | 3y 2m NPP 1y 2y 6m NPP 1y <u>Total:</u> 4y 2m NPP 2y | AD | Assault | Nil | SNPP – 5 years 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. |

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| 5. | Fenech [2018] NSWCCA 160 | s.35(1) | VG at trial for s.33 | 3y NPP 2y | AD | Assault | | SNPP – 5 years 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 |
| 6. | Brown (33) [2020] NSWCCA 132 | 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 | SNPP – 5 years 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 |
| 7. | Shmait [2021] NSWCCA 133 | s.35(1) | PG | 4y NPP 2y 8m | AA 3y NPP 2y | Assault – poles | | SNPP – 5 years Male victim attacked by three males in public area – two offenders armed with poles with something sharp attached – planned and targeted attack although not extensive or long-standing planning – motive unclear – multiple blows – use of weapons an aggravating feature – below mid-range On appeal: evidence not sufficient to show offender physically assaulted victim – moral culpability reduced |

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| 8. | Donovan [2021] NSWCCA 323 | s.35(1) Affray | PG (25%) | 2y 6m NPP 1y 8m 2y <u>Aggregate</u> 2y 9m NPP 1y 10m | AA 2y 3m NPP 1y 6m 1y 8m <u>Aggregate</u> 2y 5m NPP 1y 7m | | Nil | SNPP 5 years With co-offenders involved in fight with two male victims – offender punched one male to head, causing him to fall and hit back of head on concrete - did not move for remainder of assault – suffered traumatic brain injury, bleeding and swelling on brain and fractures to skull. Deprived background CCA: error as to application of <i>Bugmy</i> principles – objective seriousness slightly less than mid-range – good prospects rehabilitation |
| 9. | Tonga [2023] NSWCCA 120 | s.35(1) Failing to disclose identity | PG | 22m NPP 13m | AD | Crowbar | Limited – no violence as an adult | SNPP 5 years Road rage incident – with brother assaulted victim stopped at traffic signal – grabbed crowbar from victim and struck him twice to head – short and impulsive offence – a little below mid-range Good character – dealing with drug and anger issues – father to young child with pregnant partner – remorse On appeal: no error in declining to impose ICO |

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