

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.	Farrowell-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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