

## Recklessly Wounding in Company

### s.35(3) (NSW) *Crimes Act*

s 35 (3) In company wound any person reckless as to causing actual bodily harm

**Maximum Penalty:** 10 years

**Standard non-parole period:** 4 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.	AI (17) <a href="#">[2011] NSWCCA 95</a>	s.35(3)	VG	3y NPP 18m	Crown AD	Knife - kick	Assault - on parole	With co-offenders at train station instigated fight with victim and friend – offender carried and wielded knife – kicked victim – co-offender stabbed victim several times to arm and chest – suffered life threatening and permanent injuries. Youth – troubled background – offence not planned – did not inflict stabbing. On appeal: sentence inadequate however due to completion of NPP and release on parole CCA declined to intervene
2.	Chen (22) <a href="#">[2013] NSWCCA 116</a>	s.35(3)	PG (25%)	3y NPP 18m	AD	Knife	Nil	<b>SNPP – 4 years</b> Slashed male stranger standing outside bar on arm with flick-knife – unprovoked attack Out of character – intoxicated – Chinese national – married – remorse and good prospects of rehabilitation
3.	Marial (21) <a href="#">[2016] NSWCCA 234</a>	s.35(3)	PG (25%)	7y NPP 3y 6m	AA 5y 4m NPP 3y 6m	Pen – punch and kick	Petty street crimes	<b>SNPP – 4 years</b> One of group of four males – unprovoked attack on male stranger on street at night – victim stabbed under eye by pen – sustained punching and kicking as victim attempted to escape – joint criminal enterprise Born in Sudan – witnesses extreme violence as a child – PTSD – drug and alcohol abuse – subsequent custodial offences confirm guarded prospects of rehabilitation

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4.	<b>Banks</b> (37) <a href="#">[2018] NSWCCA 41</a>	s.35(3)	PG (25%)	4y 6m NPP 3y 3m	AA 3y 9m NPP 2y 9m	"shiv"	Dishonesty, violence, armed robbery, attempted murder	<b>SNPP – 4 years</b> Prisoner stabbed another inmate – not severe wound – believed victim had stolen property from offender's home - mid-range
5.	<b>Sonter</b> <a href="#">[2018] NSWCCA 228</a>	s.35(3)  Affray	PG (25%)	3y  2y 7m  <u>Total:</u> 4y 6m NPP 3y 4m	AD	n/a	Not indicated - on parole	<b>SNPP – 4 years</b> With co-offender assaulted male during dispute involving other friends – victim knocked to ground and rendered unconscious, suffered 4cm laceration to the top of head, fractured toe, pain in jaw – not able to identify who specifically caused which injury - joint criminal enterprise
6.	<b>Kingsley</b> <a href="#">[2019] NSWCCA 19</a>	2 x s.35(3)	PG (10%)	<u>Aggregate:</u> 6y NPP 4y	AD	Butt of knife	Not indicated.	<b>SNPP – 4 years</b> With two co-offenders assaulted victim in argument over drugs and money – offender used butt of knife to hit victim in head – co-offender stabbed victim in foot.
7.	<b>Patrick</b> (36)       <b>Whitney</b> (24)  <a href="#">[2020] NSWCCA 63</a>  <a href="#">[2020] NSWCCA 146</a> (Whitney only)	s.35(3)  Knowingly take part supply meth  Possess unauth firearm  Sched: 3 offences  s.35(3)	PG (10%)  (10%)  (20%)  PG (10%)	4y  1y 4m  1y 2m  <u>Agg:</u> 5y 6m NPP 4y 1m  4y NPP 3y	AD      AA only to change commencement date	bike chain	limited      lengthy including violence	<b>SNPP – 4 years</b> Together attended home of male acquaintance to 'evict' his girlfriend – P assaulted victim swinging bike chain against her head – mid range offence – aggravated by use of weapons, planning and commission of offence in home of victim – equal culpability P – arranged for male acquaintance to obtain 28.35g methamphetamines for supply – found in possession of .177 Gacedo air rifle – drug user – no remorse W – drug user – poor prospects of rehabilitation – no remorse – father to five children Application to reopen appeal under s.50C – Appeal Court erroneously took into account facts not relied upon at first instance – after reconsideration of grounds of appeal found sentence not manifestly excessive and dismissed application

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8.	<b>Cao</b> (19)  <b>McGregor-Macdonald</b> (18)  <a href="#">[2020] NSWCCA 223</a>	s.35(3)  AOABH  s.35(3)  AOABH  Sched: Assault	PG (25%)    PG (25%)	<u>Indicative</u> 2y 3m NPP 18m  2y  <u>Aggregate:</u> 4y NPP 2y  <u>Indicative</u> 3y NPP 18m  2y 4m  <u>Aggregate:</u> 4y 4m NPP 2y 2m	AA <u>Indicative</u> 2y 3m NPP 18m  2y  <u>Aggregate:</u> 3y 2m NPP 1y 7m  AD	Kicks and punches	Limited    Single offence committed on same day	<b>SNPP – 4 years</b> Together approached male strangers at bus stop AOABH: C punched victim to face in unprovoked – victim fell and kicked by both offender ten times Assault: MM punched second victim and threatened to stab if assisted Wound in Co: third victim sought to intervene - pushed to ground, kneed in face and punched multiple times by MM – injuries included bleeding and fracture to medial wall of orbit Offences mid-range– both offenders intoxicated C – genuine remorse – Vietnamese background – supportive family – good prospects of rehabilitation MM – remorse – indigenous male – substance abuse – good prospects of rehabilitation On appeal: no error in taking into account fracture in relation to s.35(3) offence – C established parity
9.	<b>Funaki</b> <a href="#">[2021] NSWCCA 165</a>	3 x s.35(3)	PG	<u>Aggregate:</u> 3y 6m NPP 2y 4m	AD	Knife	Nil violence	<b>SNPP – 4 years</b> One of group of young persons associated with gang who invaded 18y birthday party at home seeking fight with person from rival gang – three males suffered stab wounds – attack also included punching and stomping on head and body of victims – co-offenders armed with machete, bowie knife and kitchen knife – offender drove some co-offenders to party and was present at time of offence – not armed and did not participate in violence – below mid-range Genuine remorse – very good prospects of rehabilitation – risk of re-offending low – youth and immaturity

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10.	ZXT (17) <a href="#">[2023] NSWCCA 222</a>	s.35(3)	PG (25%)	Control order 18m with NPP 9m	AD	Knife		Victim asked applicant and friends to leave party to which not invited - argument ensued and punches thrown - applicant pulled out hunting-style knife with a four-to-five inch blade from pocket - applicant and friends chased and encircled victim - applicant struck victim with knife in lower back - victim suffered life-threatening wound requiring surgery. Out of character - unlikely to reoffend - good prospects rehabilitation - youth and immaturity. CCA: Children's Court failed to consider whether to suspend sentence – no lesser sentence warranted - spontaneous offence but possibility of occurrence plainly foreseeable when applicant went out, armed, with his two friends.

Last Updated: September 2023