

***R v Rowe* [1996] NSWCCA 1 (3 October 1996) – New South Wales Court of Criminal Appeal**

‘Deterrence’ – ‘Family hardship’ – ‘Kidnapping’ – ‘Physical violence and harm’ – ‘Rape’ – ‘Relevance of victim’s wishes’ – ‘Sentencing’ – ‘Victim contribution’

Charge/s: Kidnapping, rape.

Appeal Type: Appeal against sentence.

Facts: The male applicant and the female complainant lived in an ‘off and on’ de facto relationship over a period of five years and had two children together. Immediately prior to the offences, the relationship had broken down again. The applicant became jealous because he believed the complainant was seeing a new man. He then forced the complainant into his car, drove her to his premises, threatened to kill her family and this new man, and proceeded to have sexual intercourse with her without consent. He was sentenced to seven years imprisonment, with an effective minimum term of four years. The complainant wrote to the sentencing judge stating that she had resumed a relationship with the applicant, she did not want him to go to prison (particularly because of the trauma that would result to their children), and she had forgiven the applicant.

Issue/s: Some of the grounds of appeal included –

1. The sentencing judge gave insufficient weight to his subjective features including his age, background, disrupted and violent upbringing, education and employment.
2. The sentencing judge gave insufficient weight to the wishes of the complainant

Decision and Reasoning: The appeal was dismissed. First, the sentencing judge did not err when he rejected the claim that these subjective circumstances had a relationship to the commission of these offences and therefore ought to have mitigated the sentence (See 472). Second, Hunt CJ dismissed the contention that the sentencing judge ought to have given greater weight to the wishes of the complainant. As at 472-473:

'This Court has said more than once that the attitude of complainants cannot govern the approach to be taken in sentencing. In [Glen](#), Simpson J pointed out that, whilst forgiveness by the victim may be relevant in some cases, exceptional caution is required in allowing such evidence to be given in relation to domestic violence type offences. The present offences fell within the same category, where the nature of the relationship between the offender and the victim is such that the victim will frequently, and clearly contrary to their own interests and welfare, forgive their attacker. The importance of general deterrence in such cases overrides any minor relevance that evidence of forgiveness might have.

'This Court has also said more than once that the hardship upon the family of an offender will not be relevant in mitigation unless it goes beyond that which inevitably results in any case of incarceration and unless it is sufficiently extreme as to demand that the judge draw back. That has not been established in this case. It may be ironic, as has been suggested, that the victim and her children are going to suffer the punishment imposed upon the offender, but the fact remains that the law requires such a punishment to be imposed'.