

***R v Palu* [2002] NSWCCA 381 (17 September 2002) – New South Wales Court of Criminal Appeal**

‘Malicious grievous bodily harm’ – ‘Physical violence and harm’ – ‘Protection of the community’ – ‘Relevance of the attitude of the victim’ – ‘Sentencing’ – ‘Victim contribution’

Charge/s: Maliciously inflicting grievous bodily harm.

Appeal Type: Crown appeal against sentence.

Facts: The male respondent and the male victim were drinking partners and got into a fight. The victim suffered a skull fracture. The sentencing judge adjourned proceedings and granted bail to the respondent on certain conditions, under s 11 of the *Crimes (Sentencing Procedure) Act*

Issue/s: In light of the seriousness of the offence and because it was inevitable that a full-time custodial sentence had to be imposed, it was outside the exercise of His Honour’s discretion to make an order adjourning proceedings.

Decision and Reasoning: The appeal was allowed. This was not a case involving domestic violence but Howie J’s comments regarding the relevance of a victim’s attitude to sentence have been cited in subsequent domestic violence cases. Here, the sentencing judge was unduly influenced by the fact that the victim and the respondent were still friends. At [37] His Honour provided:

‘The attitude of the victim cannot be allowed to interfere with a proper exercise of the sentencing discretion. This is so whether the attitude expressed is one of vengeance or of forgiveness: R v Glen [1994] NSWCCA 1 (19 December 1994). Sentencing proceedings are not a private matter between the victim and the offender, not even to the extent that the determination of the appropriate punishment may involve meting out retribution for the wrong suffered by the victim. A serious crime is a wrong committed against the community at large and the community is itself entitled to retribution. In particular, crimes of violence committed in public are an affront to the peace and good order of the community and require deterrent sentences: Henderson (NSWCCA, unreported, 5 November 1997). Matters of general public importance are at the heart of the policies and principles that direct the proper assessment of punishment, the purpose of which is to protect the public, not to mollify the victim’.

Howie J also noted that a sentencing judge should only give very limited weight to statements made by an offender to a psychiatrist or psychologist reproduced in reports, including expressions of remorse (See [39]-[41]).

Note: Sections 4A and 4B of the *Crimes (Sentencing Procedure) Act* were introduced on 25 September 2018 imposing additional requirements in sentencing for domestic violence offences in NSW.