

***R v TP* [2018] NSWSC 369 (23 March 2018) – New South Wales Supreme Court**

‘Battered women’ – ‘Exposing children to violence’ – ‘Failure to protect’ – ‘Moral culpability’ – ‘People with children’ – ‘Sentencing’ – ‘Vulnerable groups’

Charges: Negligent manslaughter x 1.

Case type: Sentence.

Facts: The defendant’s husband, JK, pleaded guilty to murdering the defendant’s daughter, CN. The defendant was charged with failing to remove CN from violence and obtain medical treatment for her ([3]). JK inflicted horrific physical and psychological violence on the defendant and her two children for years ([4]), including tying CN to the bed and hitting her with wooden slats ([13]-[19], [36]-[38]). Expert evidence established that the defendant was suffering from post-traumatic stress disorder and severe depression caused by repeated exposure to violence ([5], [40]-[41]).

Issue: Sentence to be imposed.

Decision and Reasoning: Justice Hamill remarked that ‘[the] criminal law is a blunt tool in circumstances such as these’ ([8]). The defendant’s psychological conditions substantially impacted the application of the principles of sentencing, the purpose of punishment and reduced the ultimate sentence. The impact was significant because first, there was a direct link between the violence suffered by the defendant and her neglect of CN ([55]). Second, the weight afforded to general deterrence is greatly reduced ([56]-[57]). Third, the defendant’s rehabilitation through psychologists and psychiatrists would be interrupted by a custodial sentence ([58]). Fourth, a full-time custodial sentence will weigh more heavily on TP than it would on a person who does not suffer from the severe depression, grief and post-traumatic stress disorder ([59]). Fifth, the defendant was unlikely ever to offend again ([60]). The offending was aggravated by CN’s young age and fragility ([62]).

Having considered all possible alternatives, including a fine, bond or community service order, Hammill J concluded that only a period of imprisonment was appropriate ([78]). Justice Hammill imposed a sentence of 4 years, with a non-parole period of 18 months ([79]-[80]).

Annexed to the judgement, at [82], is a useful summary of comparable cases, although no cases had precisely the same features as this one.