

***R v Kennewell* [2019] ACTSC 125 (25 January 2019) – Australian Capital Territory Supreme Court**

‘Aboriginal and Torres Strait Islander people’ – ‘Bail’ – ‘Bystander intervention’ – ‘Imprisonment’ – ‘Physical violence and harm’

Charges: Recklessly inflicting grievous bodily harm x 1.

Case type: Conviction and sentence.

Facts: The offender pleaded guilty to the offence of recklessly inflicting grievous bodily harm after the matter was committed for trial, but before the trial date was set.

The offender attended a friend's party in the ACT, but started arguing with his girlfriend and left the party. Later that night, the victim heard the argument and, specifically, a female screaming. Concerned for her safety, the victim approached them. The offender stabbed the victim 3 times, and then ran away, followed by his girlfriend. The offender was arrested and granted bail the following day. He was subsequently imprisoned for offences (involving stabbing another person with a knife) committed in NSW while on bail.

Issue: The Court determined the appropriate sentence for the offence in the circumstances.

Held: Burns J held that the recent offending demonstrated that the offence in question was not an isolated incident. He was also found in possession of an instrument capable of being used to stab after he was extradited from NSW. These matters strongly suggest the need for specific deterrence. His Honour found the offending was unprovoked. The offender's personal circumstances were also considered. He is a 20 year old Indigenous man, his parents separated when he was young, and he has anger management, drug and alcohol issues. However, he maintains a good relationship with his family, with whom he had remained in contact since he was incarcerated. It was noted that the offender is in good health, has a positive attitude, has employment available to him, and had completed an anger management course. His Honour was satisfied that the offender had reasonable prospects of rehabilitation, provided that he ceases carrying weapons, and addresses his anger management, drug and alcohol issues and employment. Even though the offender said that he carries a knife for self-protection, Burns J held that ‘no law-abiding citizen in this country, not associating with criminals or engaging in criminal conduct, needs to carry a knife for self-protection’ ([30]).

Notwithstanding his young age and rehabilitation prospects, Burns J held that the sentence needed to reinforce the fact that using knives to seriously harm others will be met with harsh punishment. Nothing less than full-time imprisonment would sufficiently address the sentencing requirements ([31]). The offender was convicted and sentenced to 3 years and 1 month imprisonment, with a non-parole period of 18 months.