***Goodbun v R* [2020] NSWCCA 77 (23 April 2020) – New South Wales Court of Criminal Appeal**

'Breach of advo' – 'Guilty plea - history of domestic violence - lack of remorse' – 'Manifestly excessive' – 'Murder' – 'Separation' – 'Whether aggregate sentence imposed was unreasonable or plainly unjust' – 'Whether unnecessary to make a finding of special circumstances'

Charges: Murder x 1; Contravening an apprehended domestic violence order x 1; Using an unregistered firearm x 1; Assault occasioning actual bodily harm x 1.

Case type: Appeal against sentence

Facts: The applicant man pleaded guilty to the murder of his wife (the victim), and to three related offences, namely, contravening an apprehended domestic violence order, using an unregistered firearm, and assault occasioning actually bodily harm. The victim was shot dead by the applicant. They had been married for 40 years and had 2 adult children. The applicant was sentenced to an aggregate sentence of 41 years 6 months imprisonment, with a non-parole period of 31 years and 1 month. He was born in 1956 and, if alive, would be 91 at the time of eligibility for parole.

The sentencing judge described the murder as a "chilling and deeply shocking crime which, without hyperbole, could be described as an execution" ([46]). Her Honour stated that while the applicant did not have a lengthy criminal history for domestic violence, the incident occurred in the context of a history of significant domestic violence ([63]). It was against this background that the sentencing judge found the applicant to be motivated by hatred to kill the victim as she was instrumental in the issue of an ADVO and the bringing of associated criminal charges. She also highlighted the need for specific and general deterrence, "describing domestic violence as a profoundly serious problem in the community, extending not infrequently to the murder of a spouse or partner" ([64]). Her Honour did not make a finding of special circumstances and emphasised that the "principle consideration is to ensure that the minimum period of incarceration reflects the crime and the subjective case".

Issue: The applicant sought leave to appeal against the aggregate sentence on two grounds:

- The sentencing judge erred in determining that it was unnecessary to make a finding of special circumstances because of the length of the sentence that she proposed to impose and the ordinary statutory ratio that applied;
- The sentence was manifestly excessive.

Held:

Appeal Ground 1:

It was submitted that the sentencing judge erred in determining that it was unnecessary to make a finding of special circumstances, having regard to the applicant's age, health, lack of experience in prison and risk of institutionalisation ([70]). All judges dismissed the first ground of appeal. Bathurst CJ held that the sentencing judge did not err in reaching her conclusion that the non-parole period was the minimum period of incarceration appropriate, as she took into account the applicant's age, the nature of the case and the applicant's subjective circumstances ([77]). Fullerton J added that the sentencing judge was justified in declining to make a finding of special circumstances, as she gave "extensive consideration" to matters relevant to determining the minimum period of incarceration, including, but not limited to, the objective gravity of the totality of the offending, and the lack of evidence of genuine remorse or prospects of rehabilitation ([125]). Similarly, Bellew J found that just because a sentence may have the practical effect of amounting to a sentence of life imprisonment, it does not mean that a sentencing judge has erred. The objective seriousness of an offence is a fundamental principle that should be reflected in a sentence, even where adherence to such a principle may impose a life sentence on an offender of middle to advanced age ([215]).

Appeal Ground 2:

Bathurst CJ dissented on the second ground of appeal. His Honour found that the indicative sentence of 40 years and 6 months imposed after a discount for the guilty plea was extremely high. He noted that the sentence appeared to be inconsistent with legal principle in sentencing for this type of offence ([112]). Further, he found that the aggregate sentence was substantially imposed for the murder offence, and as a consequence, it was manifestly excessive and should be set aside ([114]-[115]). As this was a dissenting judgment, it was not necessary for his Honour to re-sentence the applicant ([116]).

Fullerton and Bellew JJ, on the other hand, dismissed the second ground of appeal. After taking into account the sentencing judge's sentencing remarks and giving due weight to "the applicant's calculated and brazen determination to kill his wife in an act of callous and unbridled revenge", Fullerton J was not satisfied that the aggregate sentence was "unreasonably or plainly unjust" ([132]-[133]). Before concluding that the sentence imposed was not unreasonable or unjust, Bellew J set out the circumstances of the offending which indicated that it was towards the very top of the range:

- The commission of the offences in the context of domestic violence, and in the context of a breach of an ADVO, were circumstances which called for the need for specific and general deterrence, and denunciation ([261]);
- Another important part of the background to the offending was the fact that the applicant made a number of statements prior to the offending in which he expressed an intention to kill the deceased ([262]);

- The applicant’s planning of the murder was significant - he travelled a considerable distance to the victim’s home, and arrived in the early morning at a time when he knew that she would likely be asleep ([263]-]264]);
- The offending was in the nature of an execution and involved gratuitous cruelty towards the victim ([265]).
- The offending was in breach of the ADVO and the applicant’s conditions of bail ([266]).