

Moore v R [2019] NSWCCA 264 (4 November 2019) – New South Wales Court of Criminal Appeal

‘Manifestly excessive’ – ‘Physical harm and violence -threats to kill’ – ‘Separation’ – ‘Suicide threat’ – ‘Weapon’

Charges: Grievous bodily harm with intent x 1; Detain with intent to obtain an advantage and immediately beforehand occasion actual bodily harm x 1; use offensive weapon with intent to commit an indictable offence x 1.

Proceedings: Appeal against sentence.

Facts: The applicant sought leave to appeal on grounds that the sentencing judge erred in his assessment of the objective seriousness of the counts, failed to accurately assess the applicant’s prospects of rehabilitation and likelihood of reoffending and the sentence imposed was manifestly excessive (12 years imprisonment, non-parole period 9 years). The accused ‘ambushed his ex-partner outside her house, beating her around the head and body with an improvised metal pole. He then forced the victim into her own car, which he proceeded to drive around to [surrounding suburbs], all the while making threats to kill himself, or to kill them both’. When the victim tried to escape the applicant pulled her back into the car by her hair. The victim was trapped in the car for four hours before the applicant crashed into a telephone pole.

Grounds of appeal:

- > The sentencing judge erred in his assessment of the objective seriousness of the counts;
- > The judge failed to accurately assess the applicant’s prospects of rehabilitation and likelihood of reoffending;
- > The sentence imposed was manifestly excessive.

Held:

Ground 1: The sentencing judge did not err in his assessment of the objective seriousness of Count 1 because the seriousness of the offence was increased by factors including planning, duration, brutality, infliction of pain, lack of provocation, and that it occurred in a context of a domestic relationship. In relation to Count 2, it was found that the magistrate did not err in his assessment as the offence occurred spontaneously.

Ground 2: The court found that it was open on the evidence for the judge to approach the issues relating to the establishment of mitigating factors in the way he did.

Ground 3: 'Given the gravity of the applicant's offending and the findings of the judge as to objective seriousness, with full recognition of the mitigating factors that stood in the applicant's favour', Hulme J was of the view that the sentence imposed was not manifestly excessive