

***R v Kotevski* [1998] NSWCCA 1 (3 April 1998) – New South Wales Court of Criminal Appeal**

‘Malicious wounding with intent to cause grievous bodily harm’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Sentencing judge should not enter into a determination of the merits of matrimonial disputes’

Charge/s: Malicious wounding with intent to cause grievous bodily harm.

Appeal Type: Appeal against sentence.

Facts: The victim was the applicant’s estranged wife. Despite living apart and having commenced Family Court proceedings, they continued to work together in a takeaway food business. One day at work, they were arguing and the applicant ‘snapped’. He repeatedly stabbed the victim with a scraper and a trowel before picking up a long bladed knife and lunging at the victim. Someone heard the victim’s screams and managed to intervene. The applicant was sentenced to three years imprisonment with a minimum term of two years and three months.

Issue/s: Some of the grounds of appeal included –

1. Whether the sentencing judge erred in not taking into account, or in not sufficiently taking into account, the belief by the applicant that he had been unfairly treated by his wife and the applicant's consequential feelings of anger and frustration.
2. Whether the sentencing judge erred in declining to enter into a determination of the merits of the matrimonial disputes between the applicant and his wife.

Decision and Reasoning: The appeal was dismissed by James J (Simpson J agreeing). First, the sentencing judge did not proceed on the basis that the applicant’s belief and feelings about his wife were irrelevant in the sentencing of the applicant. On the contrary, the sentencing judge appropriately took into account these feelings expressly when he noted that the attack by the applicant on his wife was not pre-meditated and that the applicant while subject to stress had ‘snapped’ and had ‘on the spur of the moment’ engaged in a ‘heated’ attack. His Honour was not required to take the applicant’s belief and feelings about his wife any further into account (10-11). Second, the sentencing judge was justified in adopting the position that he would not enter into a determination of the merits of the matrimonial disputes (i.e. who was right and who was wrong) and this was irrelevant to sentencing, except insofar as determining the attack was not pre-meditated (11-14).