

***Field v R* [2020] NSWCCA 105 (1 May 2020) – New South Wales Court of Criminal Appeal**

‘Aboriginal and Torres Strait Islander people’ – ‘Appeal against sentence’ – ‘Jealous behaviours’ – ‘Manifestly excessive’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Substance abuse’ – ‘Weapon’

Offences: Causing grievous bodily harm with intent to cause grievous bodily harm

Proceedings: Appeal against sentence

Grounds:

1. The sentencing judge’s assessment of the objective seriousness of the offence as "just below midrange" was not open to her.
2. The sentencing judge erred in her approach to general deterrence by failing to have regard to the individual circumstances of the offence and offender.
3. The sentencing judge erred by failing to give effect to his findings of special circumstances in relation to the overall effective sentence.
4. The sentence is manifestly excessive.

Facts: The male victim was in a relationship with Ms Crowther (‘C’), who was also in a relationship with the appellant, an Aboriginal man. After staying at C’s house overnight, the victim sent C text messages (which were consistent with someone who was in an intimate relationship) but C did not reply so the victim waited for C at her house while consuming alcohol. The victim fell asleep on the front veranda and was awoken by the appellant opening the front door. The victim punched the appellant in the face, causing him to stagger backwards. The victim then went inside and remonstrated with C. He then felt a blow to his stomach and realised he had been stabbed, so he went to the kitchen to escape. He applied paper towel to his stomach and the appellant said, "Come out and I’ll finish ya". C left to collect her daughter from school and the appellant also subsequently left. The victim was left by himself and called 000. He underwent a number of surgical procedures over the following months.

The appellant was convicted and sentenced to six years’ imprisonment with a non-parole period of four years. In sentencing the appellant, the judge found that the appellant was raised in an extremely violent and dysfunctional environment [18]. Furthermore, he left school in year eight, was illiterate [19], had been using drugs since he was 16 [20] and suffered from longstanding mental illnesses [21].

Judgment: The court dismissed the appeal. Regarding Ground 1, the court held that the assessment of objective seriousness was open to the sentencing judge, taking into account the serious injuries and harm suffered by the victim, that the appellant used a knife capable of inflicting serious injury or worse, and that the offence was committed spontaneously as part of an excessive and disproportionate mode of self-defence [54].

The court also held that Ground 2 had not been made out. The court found that the comments made by the sentencing judge regarding general deterrence had direct application to the facts of the case and did not constitute some generalised "motherhood statement", from their context and content [74]. The sentencing judge did not downplay or ignore the appellant's mental illness [74] because the mental illness aspect of the appellant's claims "appear[ed] to be unrelated to his criminality generally and this offence in particular" [70].

In holding that Ground 3 had not been made out, the court stated that the "fact that the applicant was subject to conditional liberty at the time of the offences operates as an aggravating factor by virtue of its existence at the operative time and not because of its capacity to rationally affect the criminality of the offence" [86].

The court held that Ground 4 had not been made out and therefore that the sentence was not manifestly excessive because:

1. The sentence has to be considered against a maximum penalty of 25 years imprisonment and a standard non-parole period of 7 years. These are significant guidelines.
2. The applicant received the benefit of a finding of special circumstances such that the non-parole period is 67 per cent of the total sentence.
3. Having been found guilty by a jury after trial, the applicant was not entitled to any utilitarian discount.
4. The offence properly fell just below the midrange of objective seriousness for the reasons advanced in relation to appeal ground 1. Although the applicant's offence was found to involve a spontaneous act of excessive self-defence, those actions also involved a significantly disproportionate response to the perceived threat. This response involved the use of a knife which caused severe ongoing physical and emotional harm to the victim.
5. The applicant's criminal history disentitled him to the leniency to which a person with no criminal history may have been entitled.
6. The applicant was subject to conditional liberty at the time of the commission of the offence.
7. The applicant's sentence was backdated in a manner favourable to the applicant to 18 April 2018. This backdating subsumed the entirety of his time in custody for six other unrelated offences for which he had received sentences of imprisonment ranging from 3 to 6 months.