

***Bellchambers v The Queen* [2011] NSWCCA 131 (10 June 2011) – New South Wales Court of Criminal Appeal**

‘Mitigating factors’ – ‘Rape’ – ‘Relevance of a prior relationship in sexual assault offences’ – ‘Sentencing’ – ‘Sexual and reproductive abuse’

Charge/s: Rape x 4.

Appeal Type: Appeal against sentence.

Facts: The female complainant and the male applicant were in a relationship. Counts 1 and 2 took place after the complainant refused to have sex with the applicant but he had sexual intercourse with her regardless. The complainant reported these incidents to her general practitioner and the applicant was charged. Despite these charges, a sexual relationship continued between the applicant and the complainant. Counts 3 and 4 took place again after the complainant said she did not want to have sexual intercourse with the applicant. The applicant was sentenced to ten years imprisonment with a non-parole period of seven years.

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

- > The sentencing judge erred by failing to impose a non-parole period for the first two counts.
- > The sentencing judge failed to determine the objective seriousness of the offences.
- > The sentencing judge did not properly assess the totality of the criminal offending by determining the individual sentences and then assessing the totality but rather did the reverse.
- > The sentence was manifestly excessive.

Decision and Reasoning: The sentencing judge’s decision was replete with errors and the appeal was allowed. First, the sentencing judge failed to set a non-parole period for the first two counts (See [30]-[31]). Second, the sentencing judge erred by stating that the objective seriousness of the offences were ‘at least’ in the mid-range of gravity. The sentencing judge must make apparent and define the extent to which the offence is above the mid-range (See [32]-[36]). Third, the sentencing judge did not follow the approach set out in *R v Pearce*.

Finally, the sentence was manifestly excessive. The sentencing judge failed to fix individual sentences and review these provisional sentences to ensure they were appropriate for the offences at hand. Further, the sentencing judge erred in his characterisation of the objective seriousness of the offences. While the offences were serious, they occurred in the context of a domestic relationship ‘which involved considerable ambivalence on the part of the complainant’ (See [47]). The sentencing judge also failed to review the subjective circumstances of the applicant. The applicant was resentenced to seven years imprisonment with a non-parole period of five years.