

***Samandi v R* [2020] NSWCCA 217 (27 August 2020) – New South Wales Court of Criminal Appeal**

‘Application for leave to appeal against conviction and sentence’ – ‘Application to withdraw guilty plea’ – ‘Guilty pleas after commencement of trial’ – ‘Manifestly excessive’ – ‘Systems abuse’

Charges: Assault occasioning actual bodily harm x 6; Assault x 3; Intentionally damaging property x 1; Making a false accusation knowing that persons are innocent of an alleged offence x 1; Contravention of a protection order x 1.

Proceedings: Application for leave to appeal against conviction and sentence.

Facts: When the applicant was originally committed for trial the Crown also alleged four counts of sexual intercourse without consent (also domestic violence offences). The Crown accepted a plea arrangement where the applicant pled guilty to all other counts and the Crown would not proceed further on the four counts of having sexual intercourse without consent. The applicant signed instructions agreeing to the plea deal. The trial judge set out the scale of the offending, namely that between December 2015 and February 2017, the male applicant repeatedly assaulted his female partner. The trial judge highlighted that ‘A common feature of the assaults upon the victim was the quite unnecessary use of force in response to minor matters’, as well as the applicant giving ‘false explanation[s] to the police’ to cover up his conduct [71]. The trial judge noted that domestic violence offences are ‘serious matters ... worthy of exemplary sentences in the context of giving proper weight to the purposes of sentencing that reflect the need to send a message to the wider community’ [96]. The trial judge took into account mitigating factors such as the guilty plea.

Issues: (1) Whether a miscarriage of justice will occur if the applicant is not permitted to withdraw their guilty plea; ... (4) Whether the sentence was manifestly excessive.

Decision and reasoning: *Application for leave to appeal against conviction refused. Application for leave to appeal against sentence granted. Appeal against sentence dismissed.*

(1) The applicant has not established that a miscarriage of justice will result from him being held to the pleas of guilty that he entered.

The Applicant’s pleas of guilty were entered freely and voluntarily, and were the subject of written instructions from the Applicant to his lawyers. There was no intimidation, improper inducement or fraud which led to the Applicant’s pleas of guilty. This was an informed decision by the Applicant to plead guilty to the charges for which sentence was passed [123].

(4) The aggregate sentence was not manifestly excessive. The Court endorsed the judgment in *Cherry v R* [2017] NSWCCA 150 that:

[155]: '[78] ... current sentencing practices of 'offences involving domestic violence' [may] depart from past sentencing practices for this category of offence because of changes in societal attitudes to domestic relations'. It is undoubtedly the case that the criminal law, in the area of domestic violence, requires rigorous and demanding consequences for perpetrators for the purpose of protecting partners, family members and the wider community. [79] In the context of domestic violence offences, the High Court has observed that it is a longstanding obligation of the State to vindicate the dignity of each victim of violence, to express the community's disapproval of that offending and to afford such protection as can be afforded by the State to the vulnerable against repetition of violence'.

[156]: The applicant's offences reflected his exercise of control and domination over the victim with these being common features of domestic violence offences [76]-[77]... Specific and general deterrence were important factors on sentence in this case together with the requirement for powerful denunciation by the community of such conduct and recognition of the harm done to the victim as a result of these offences: *Cherry v R* [76].

[157]: It is important to keep in mind, as well, the serious public justice offence committed by the applicant contrary to [s 314 Crimes Act 1900](#) ... the applicant's s 314 offence involved the making of false allegations against police officers designed to protect the applicant himself from prosecution for domestic violence offences against his partner. The applicant caused injuries to himself which he falsely attributed to police. As his Honour [the sentencing judge] observed, the applicant did not carry through with further reports. However, this was a serious public justice offence which warranted the indicative sentence of imprisonment for two years which was itself a significant component of the aggregate sentence imposed upon the applicant.

[158]: There is a continuing and deep-seated lack of insight on the part of the applicant concerning his domestic violence offences.