

SC v R [2019] NSWCCA 25 (15 February 2019) – New South Wales Court of Criminal Appeal

‘Breach of trust’ – ‘Children’ – ‘People with children’ – ‘Physical violence and harm’ – ‘Sexual and reproductive abuse’

Charges: Nine counts, including assault occasioning actual bodily harm, sexual intercourse without consent and armed with intent to intimidate.

Case type: Application for leave to appeal.

Facts: The applicant and the complainant were married with three children. The applicant was tried by a jury on nine counts, which included various sex offences and assaults. The complainant alleged that the applicant had punched her in the face and mouth, forcibly held her down and raped her, forced anal intercourse on two instances, pushed her head against a laundry wall, threw her out of a door, and grabbed a knife and threatened physical harm. The jury found the applicant guilty on Counts 6, 7 and 8 and not guilty on Counts 1-5 and 9. The sentencing judge imposed an aggregate sentence of 10 years with a non-parole period of 7 years and 6 months ([92]).

Issues: The appellant sought leave to appeal against the conviction on the grounds that (1) there was a miscarriage of justice as the trial judge failed to discharge the jury following the admission of unfairly prejudicial evidence (ground 1); and (2) the verdict in respect of Count 6 was inconsistent with the not guilty verdicts on Counts 1-5 and 9, and could not otherwise be supported by the evidence at trial (ground 2). The appellant further sought leave to appeal against the sentence on the grounds that (1) there was an error by the sentencing judge in the assessment of the gravity of Count 6 (ground 3); and (2) the indicative sentences for Counts 6, 7 and 8 were excessive and that the level of accumulation was too great (ground 4).

Decision and reasoning: The Court granted leave to appeal against the conviction and sentence. Ground 1 related to an application to discharge the jury on the basis that the jury may have heard the word 'pistol'. The trial judge refused to discharge the jury and directed them at [78]. The Court held that the trial judge was entitled to assume that the jury understood and complied with his direction. Their Honours were not satisfied that there was any miscarriage of justice ([85]). As to ground 2, the Court held that there was no inconsistency between the jury's verdicts of not guilty and guilty ([69]). With respect to ground 3, their Honours held that the sentencing judge did not err in finding the offending in Count 6 to be 'above the mid-range', and that the indicative sentence for Count 6 was not excessive ([109]). In order to establish ground 4, the applicant was required to show that the sentence imposed was unreasonable or plainly unjust ([111]). The Court did not regard any of the indicative sentences as excessive, having regard to the sentencing judge's findings and assessment of their seriousness. All three counts involved a grave breach of trust and were aggravated by having occurred in the complainant's home. Count 7 was further aggravated by having been committed in the presence of their eldest child ([112]).