

Cooper v R [2021] NSWCCA 65 (14 April 2021) – New South Wales Court of Criminal Appeal

‘Aboriginal and Torres Strait Islander people’ – ‘Application for leave to appeal against sentence’ – ‘History of abuse’ – ‘Mercy killing’ – ‘Murder’ – ‘Substance misuse’

Charges: Murder x 1; Form 1 offences (stalking/intimidating with intent and contravening an apprehended domestic violence order, ADVO).

Proceedings: Application for leave to appeal against sentence.

Facts: The applicant injected the deceased, his partner, with a lethal dose of heroin intending to cause her death. The sentencing judge accepted that this was a “mercy killing” at the deceased’s request. After a 25% reduction for his guilty plea, the applicant was sentenced to a term of imprisonment of 13 years and 6 months with a non-parole period of 10 years. There was a history of domestic violence (including an ADVO in place) and substance abuse.

Grounds of appeal:

1. The Court did not take into account the applicant’s deprived background and early introduction to substance abuse in determining his moral culpability for the offending.
2. The sentence was manifestly excessive.

Held: Appeal dismissed.

Ground 1: There was no dispute that the applicant’s deprived background and early introduction to alcohol and substance abuse was a highly relevant factor in considering the applicant’s moral culpability: *Bugmy v The Queen*; *R v Millwood*. However, the sentencing judge did take these principles into account, setting out in detail the applicant’s troubled background and early association with drugs and alcohol and referring with approval to the forensic psychiatrist’s assessment of the applicant’s mental condition. These conclusions formed part of the context for a finding of the applicant’s low moral culpability ([68]-[72]).

Ground 2: Notwithstanding the tragic circumstances surrounding the killing and the applicant's low moral culpability, it could not be said the sentence was unreasonable or plainly unjust. It had to be remembered that: (1) This was a deliberate killing of another human being by the injection of an illegal drug; (2) It took place whilst the applicant was on conditional liberty and in direct breach of his bail conditions and the ADVO; (3) Although not a significant issue in sentencing, offences on a Form 1 needed to be taken into account; and (4) Despite the applicant's mental illness reducing the need for the sentence to reflect denunciation and general deterrence, specific deterrence remained of importance ([82]-[86]).