

***R v AKB* [2018] NSWSC 1628 (2 November 2018) – New South Wales Supreme Court**

‘Arson’ – ‘Children’ – ‘Factors affecting risk’ – ‘Murder’ – ‘People with children’ – ‘Sentencing’

Charges: Murder x 1.

Proceeding type: Sentencing.

Facts: The offender and deceased married in Iran. The offender started a fire in his wife’s bedroom in the family home. She died in the fire. Their relationship prior to the fire had ‘deteriorated’ [5]. Davies J accepted that the offender became aware of the deceased’s intention to leave him. This was confirmed by the offender’s visit to the Department of Human services the day before the fire where he made a claim for a benefit, on the basis that he was separated. His Honour also accepted beyond reasonable doubt that the offender was responsible for the fire in the presence of their two young children.

Issues: Davies J determined the appropriate sentence for the offender.

Decision and reasoning: The offender was sentenced to imprisonment for a period of 36 years with a non-parole period of 27 years. His Honour remarked that ‘[t]he murder of any person is intolerable and unacceptable, but the circumstances of this murder can only be described as confronting, shocking and gruesome to a marked degree’ ([24]). The murder was aggravated by the fact that it was carried out in the presence of their two young children, in circumstances where the offender actively prevented one of their children from trying to save his mother, and at the deceased’s home where she was entitled to feel safe. It also involved gratuitous cruelty and planning and preparation (albeit minimal, [32]). However, his level of culpability was not so extreme so as to attract a life sentence. Whilst specific and general deterrence are important factors in sentencing for murder in a domestic setting (see *Hiron v R* [2007] NSWCCA 336), specific deterrence was not significant because of the offender’s low risk of reoffending. This was consolidated by the fact that the offender had no prior criminal record, the offence was committed against a person known to the offender (rather than the public at large) and his older age. His Honour concluded at [37] –

‘This was a very bad murder, but the limited planning, the absence of the need to give significant weight to community protection, and the fact that a lengthy sentence will meet the need for specific deterrence, mean that the community interest in retribution, punishment, community protection and deterrence can be met by other than the imposition of life sentence.’

Although his Honour noted that the offender had no prior convictions, he was not able to mitigate the enormity of the crime against the deceased ([46]). Further, his Honour found it difficult to see how the offender could be fully rehabilitated without acknowledging the shocking act against his wife and the impact that it continued to have on their children and the deceased's family. Accordingly, his prospects of rehabilitation were only average.