

***R v TP* [2018] NSWSC 369 (23 March 2018) – New South Wales Supreme Court**

‘Children’ – ‘Factors affecting risk’ – ‘People with children’ – ‘Physical violence and harm’ – ‘Sentencing’

Charges: Negligent manslaughter x 1.

Case type: Sentencing.

Facts: The offender’s partner, JK, committed serious acts of physical and psychological violence against the defendant and her two daughters for years ([4]), including striking them with sticks, tying one of them (CN) to a bed and hitting her with wooden slats ([13]-19, [36]-[38]). The worst of the violence was directed towards CN, which eventually resulted in her death. By her plea of guilty, the offender acknowledged that her failure to remove CN from the violence and obtain medical treatment for her serious injuries was the cause of her death ([3], [25]). Expert evidence established that the offender suffered from ‘battered wife syndrome’ - a syndrome likely to exhibit symptoms of post-traumatic stress disorder and depression caused by repeated exposure to violence ([5], [40]-[41]).

Issues: The issue was the appropriate sentence to be imposed.

Decision and reasoning: Hamill J remarked that ‘[the] criminal law is a blunt tool in circumstances such as these’ ([8]). The offender’s psychological conditions substantially impacted the application of the principles of sentencing, the purpose of punishment and reduced the ultimate sentence. The impact was significant for various reasons. Firstly, there was a clear and direct link between the violence suffered by the offender and her criminal neglect of CN ([55]). Secondly, the weight afforded to general deterrence was greatly reduced ([56]-[57]). Thirdly, the offender’s rehabilitation through regular visits to psychologists and psychiatrists would be interrupted if a full-time custodial sentence was imposed ([58]). Fourthly, a custodial sentence would weigh more heavily on the offender than it would on a person who does not suffer from the severe depression, grief and post-traumatic stress disorder ([59]). Fifthly, the offender was unlikely to re-offend ([60]). The offending was aggravated by CN’s young age and fragility after her long-term exposure to abuse ([62]). Having considered all possible alternatives, including a fine, bond or community service order, Hamill J concluded that only a period of imprisonment was appropriate ([78]). His Honour sentenced the offender to four years’ imprisonment with a non-parole period of 18 months ([79]-[80]). Annexed to the judgement, at [82], is a useful summary of comparable cases. However, there are no cases in the annexure that had precisely the same features as this one.