R v Gittany (No 5) **[2014] NSWSC 49 (11 February 2014) – New South Wales Supreme Court**

'Character evidence' – 'Following, harassing, monitoring' – 'Moral culpability' – 'Murder' – 'Objective seriousness' – 'Physical violence and harm' – 'Sentencing'

Charge/s: Murder.

Hearing: Sentencing hearing.

Facts: The offender was found guilty for the murder of his female de facto partner after a judge only trial. While the relationship was, at times, loving and happy it was also tumultuous as the offender was a jealous and possessive partner. The offender scrutinised the victim's conduct openly and covertly, keeping track of her movements through surveillance cameras and secretly monitoring her mobile phone. On 30 July 2011, the victim had decided she was leaving the offender and attempted to leave their apartment. She was physically dragged back into the apartment by the offender and sixty-nine seconds later she fell to her death from the balcony. McCallum J was satisfied beyond reasonable doubt that, in a state of rage, the offender carried the unconscious complainant to the balcony and 'unloaded' her over the edge.

Decision and Reasoning: A sentence of 26 years imprisonment with a non-parole period of 18 years was appropriate in the circumstances. McCallum J took into account of a number of considerations in imposing this sentence. Her Honour assessed the objective seriousness of the offence. McCallum J was satisfied beyond reasonable doubt that the act of unloading the complainant's body over the balcony was done with intent to kill and that, although unconscious, the complainant was undoubtedly in a state of complete terror in the last moments before her death (See [16]-[18]).

A further relevant issue in assessing objective seriousness was whether the killing was planned or premeditated. The Crown tried to adduce evidence establishing that the offender had long had in mind the possibility of committing such an act, and making it look like suicide, in the event of her leaving him. Although witness testimony substantiating this assertion was excluded for its prejudicial content, other evidence was relevant to assessing the offender's state of mind. During the relationship, the offender engaged in an extraordinary degree of manipulative behaviour and while he was not to be punished for this conduct nor did this conduct aggravate the offence, it did inform the state of mind in which he committed the offence. McCallum J was not satisfied that the offence was planned or premeditated in the traditional sense; however, she was satisfied that the offender must have anticipated the prospect that he would fly into a rage if ever she were to leave him (See [19]-[39]). Her Honour concluded:

'In my view, that history informs the degree of moral culpability of the offence. The arrogance and sense of entitlement with which Mr Gittany sought to control Lisa Harnum throughout their relationship deny the characterisation of his state of mind in killing her as one of complete and unexpected spontaneity. By an attritional process, he allowed possessiveness and insecurity to overwhelm the most basic respect for her right to live her life as she chose. Although I accept that the intention to kill was formed suddenly and in a state of rage, it was facilitated by a sense of ownership and a lack of any true respect for the autonomy of the woman he claimed to love' at [40].

In sum, the objective seriousness of the offence committed was not above the middle of the notional range, having regard to the fact that the murder was not premeditated or planned. However, the offence was of sufficient seriousness that the standard non-parole period of twenty years was to be regarded as a strong guide in this case (See [43]).

McCallum J also noted the offender's personal circumstances, including a troubling prior conviction for malicious wounding (See [44]-[59]) and noted that the complainant was vulnerable. She took into account good character references provided (noting though the contradiction posed by the way he treated the complainant) but was not persuaded that any prospect of rehabilitation existed in this case (See [65]-[74]).

This case was unsuccessfully appealed to the New South Wales Court of Appeal. See *Gittany v R* [2016] NSWCCA 182 (19 August 2016).