

***R v MacKenzie* [2000] QCA 324 (11 August 2000) – Queensland Court of Appeal**

‘Battered wife syndrome’ – ‘Manslaughter’ – ‘Negligent manslaughter’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Where the offender is also a victim’

Charge/s: Manslaughter.

Appeal Type: Appeal against conviction and sentence.

Facts: The applicant was married to her husband for 39 years and was subjected to severe domestic violence during that time. She pleaded guilty to the manslaughter of her husband. She was sentenced to 8 years imprisonment with a non-parole period of 3 years. (See further at [26]-[30]).

Issue/s:

1. Whether a miscarriage of justice occurred because of advice the appellant was given to plead guilty to manslaughter, instead of pleading not guilty to murder and seeking an acquittal on the basis of self-defence.
2. Whether the sentence was manifestly excessive.

Decision and Reasoning:

1. This argument was dismissed – the applicant never claimed she was acting in self-defence, and there was minimal evidence to that effect. However, McPherson JA did note that evidence of ‘battered wife’s syndrome’, can be relevant as expert evidence for the purposes of self-defence (or provocation), as demonstrating the heightened awareness and arousal which may be experienced by ‘battered women’, which would be relevant to whether they had reasonable grounds to use the level of force they did.
2. The appeal against sentence was upheld. McMurdo P (Dutney J concurring as to the orders made) held that notwithstanding that the applicant’s conduct was negligent and not a willed act, a substantial period of imprisonment was required to deter people from handling guns negligently, particularly in the context of domestic violence. Such conduct was not excused by the ‘grim history’ of domestic violence the appellant suffered. Nevertheless, this history did impact upon the appellant in that it contributed to (as a psychologist who interviewed her put it at [21]), ‘ineffective problem solving behaviour and a perception by [the applicant] of the narrowing of her options over time. A perception of narrowed options can often result in decisions made by the abused woman that from the outside look like poor judgment.’ This grave history of abuse was therefore an additional mitigating factor which partly explains how her behaviour came about. As such, taking into account all of the unusual circumstances, the sentence was reduced to 5 years, with a non-parole period of 1 year. McPherson JA agreed that the sentence should be reduced but proposed a slightly longer term.