BUGMY v THE QUEEN (S99/2013)

Court appealed from: New South Wales Court of Criminal Appeal
[2012] NSWCCA 223

Date of judgment: 18 October 2012

Special leave granted: 10 May 2013

On 17 May 2011 Mr William Bugmy pleaded guilty to two counts of assault contrary to s 60A(1) of the *Crimes Act* 1900 (NSW) ("the Act"). He also pleaded guilty to one count of causing grievous bodily harm with the intention of causing grievous bodily harm ("Count 3") contrary to s 33(1)(b) of the Act. All of these offences occurred on 8 January 2011 at the Broken Hill Correctional Centre where Mr Bugmy was being held on unrelated offences. All of his victims were Corrections Officers and one officer (Officer Gould) lost an eye in the attack. On 16 February 2012 Acting Judge Lerve sentenced Mr Bugmy to six years and three months imprisonment, with a non-parole period of four years and three months. The Respondent then appealed that sentence on grounds which included:

i) that the sentencing judge failed to properly determine the objective seriousness of the offence; and

ii) manifest inadequacy of the sentence.

On 18 October 2012 the Court of Criminal Appeal (Hoeben JA, Johnson & Schmidt JJ) unanimously upheld the Respondent's appeal. Their Honours then resentenced Mr Bugmy to seven years and six months imprisonment, with a non-parole period of five years. They found that Judge Lerve had failed to properly determine the objective seriousness of the offence contained in Count 3. The Court of Criminal Appeal also found that his Honour had failed to properly acknowledge the aggravating factor of Officer Gould being a serving prison officer.

The Court of Criminal Appeal further held that the weight that Judge Lerve had given Mr Bugmy's subjective case impermissibly ameliorated the appropriate sentence given. Their Honours held that the sentencing Judge had also failed to take into account the absence of any contrition on Mr Bugmy's part. He had further failed to give adequate weight to Mr Bugmy's bad criminal record. The Court of Criminal Appeal additionally held that Judge Lerve had erred in taking into account Mr Bugmy's mental illness. Their Honours found that to the extent that he suffered from any mental illness, it had nothing to do with his offending.

Given that the Respondent's appeal was so comprehensively upheld (therefore requiring resentencing), the Court of Criminal Appeal did not deal with the ground concerning manifest inadequacy.

The grounds of appeal include:

- The Court of Criminal Appeal erred in the application of s 5D(1) *Criminal Appeal Act* 1912 (NSW) by failing to consider the question of manifest inadequacy and the exercise of the residual discretion, both of which are

relevant factors to an exercise of jurisdiction on a Crown appeal.

- The Court of Criminal Appeal should have held that the trial judge did not err in taking into account mental illness or disorder as relevant to the sentence to be imposed, including, allowing “some moderation to the weight to be given to general deterrence”.