

Spencer v R

9 July 2004

Following a re-trial, the applicant was sentenced in the Alice Springs Supreme Court to 14 years imprisonment after being found guilty of manslaughter upon an indictment charging him with murder. A non-parole period of 9 years was fixed.

The applicant sought an extension of time in which to file an application for leave to appeal against sentence on the grounds that the sentencing judge erred -

1. in failing to take into account and/or reduce the sentence of the applicant on account of his offer to plead guilty to manslaughter prior to the first trial upon a charge of murder,
2. in failing to take into account as a mitigating factor the period of delay prior to the imposition of the sentence,
3. in failing to take into account as a mitigating factor the circumstances of the applicant's imprisonment during the five year period from his arrest until the imposition of sentence,
4. in taking into account and/or giving undue weight to the applicant's prior criminal record as impacting upon the seriousness of the offence,
5. in failing to give any or adequate weight to the personal circumstances of the applicant, in particular, his age, cultural factors, his family circumstances and his alcohol problems,
6. in that having determined that the jury verdict was consistent with a finding that the applicant formed only the intent necessary to prove manslaughter, he then failed to evaluate the evidence upon the basis that the jury had rejected the prosecution case that the applicant was guilty of murder, and
7. by imposing a sentence manifestly excessive having regard to the sentences which were imposed for other offences of manslaughter as at the time of the commission of the offence.

The Crown opposed the application.

The extension of time was granted. Leave to appeal was granted in respect of grounds 1, 2, 3, 4, 6 and 7.

The appeal was heard on 19 April 2005 and the court delivered its decision on 29 April 2005. See under Decisions for a further note of the case.