

**Dooley v R**

**19 May, 22 July 2003**  
**Angel, Mildren & Riley JJ**  
**[2003] NTCCA 6**

The appellant pleaded guilty in the Supreme Court to one count of doing a dangerous act accompanied by the circumstances of aggravation that (i) he thereby caused the death of another and (ii) that at the time of the offending he was under the influence of alcohol. The maximum penalty for the offence is 14 years imprisonment. The appellant was sentenced to imprisonment for 9 years. A non-parole period of five years was fixed.

The appellant was granted leave to appeal against sentence on 18 January 2002 on the grounds that (i) the sentence was manifestly excessive, (ii) that it was manifestly disparate to the general pattern of sentences and (iii) that by reason of new or fresh evidence which had arisen since the imposition of the sentence, the sentence imposed was manifestly excessive.

The deceased and the appellant knew each other. Several weeks prior to the death of the deceased, the appellant's young daughters informed the appellant that the deceased had exposed himself to them. The appellant decided that informing the police would not achieve anything and decided to deal with the matter himself. On the day of the offence the appellant together with two companions spent the afternoon drinking beer. They then decided to locate the deceased and *teach him a lesson*. After driving to the rural area and making inquiries of several people they located the deceased at his residence. The appellant chased the deceased, caught him and proceeded to punch and kick him. He told the deceased to leave the Territory. The deceased sustained extensive injuries to the head and body. He died from a heart attack brought on by the stress of the severe and substantial assault. When spoken to by police the appellant made partial admissions. He said he committed the assault by himself. At the hearing he acknowledged the presence of one person in the vehicle by name but declined to identify the other.

Almost seven months after the appellant was sentenced, he revealed to police the identity of the third person, R, who accompanied him and described the role of R in the assault. R was subsequently tried and sentenced. The appellant gave evidence against R at R's trial. On appeal, the appellant argued this assistance shed new light upon matters considered by the trial judge in mitigation of penalty, namely, that his prospects of rehabilitation were limited as were his feelings of remorse and his acceptance of moral culpability.

The court of appeal unanimously dismissed the appeal holding that

1. The sentence was not manifestly excessive because the infliction of vigilante type vengeance brought the matter within the worst category of offending of its kind. Further, *such activity must be suppressed and calls for a serious reaction from any court anxious to preserve the rule of law*. General and specific deterrence were significant matters for consideration in the sentencing process. The sentence imposed was appropriate.
2. An offence against s.154 of the *Criminal Code* (doing a dangerous act) covers a

wide range of conduct and, like manslaughter, allows no statistical range. As the sentences imposed in other cases referred to by the appellant were not truly comparative, it could not be demonstrated that the sentence imposed was manifestly disparate to the general pattern for sentences imposed in relation to s.154(4) of the *Criminal Code*.

3. The evidence sought to be adduced on the hearing of the appeal by the appellant was not fresh or new evidence and would be rejected. The appellant's post-sentencing decision to assist the prosecuting authorities and disclose matters which he was aware of at the time of sentence did not show the true significance of facts which were in existence at the time of sentence, did not throw new light upon his involvement in the offence, did not minimise his involvement in the offence and did not shed light upon the extent of his remorse or his prospects of rehabilitation at the time of sentencing. The court observed that if assistance to the prosecuting authorities is provided after the sentencing exercise is complete and does not throw light upon circumstances which existed at the time of sentence, then it is a matter for consideration by the Executive in the exercise of the prerogative of mercy, not by an appellate court.