

Munar v R

24 February 2003, 5 November 2003

Angel ACJ, Riley J & Priestley AJ

Ex tempore judgment

On 17 December 2002, the appellant was sentenced to 10 years imprisonment with a non-parole period of seven years for an unprovoked, random, vicious and persistent attack on a female jogger near the Kimmorley Bridge, Rapid Creek. The appellant used his fists and a tree branch as weapons. He had pleaded guilty to unlawfully causing grievous harm, deprivation of liberty, and assault with intent to have carnal knowledge. Following a jury trial, he was acquitted of having sexual intercourse without consent but was convicted of attempting to have sexual intercourse without consent.

The appellant was almost 19 years old at the time of the offences. His victim was 43 years old. The victim had been savagely beaten over a considerable period and had only escaped through her own bravery and quick thinking. The assault caused life-threatening injuries to the victim with devastating consequences both physically and psychologically. The sentencing judge found that the appellant had shown no remorse for his offences.

The appellant applied to the Court of Criminal Appeal for leave to appeal against severity of sentence on nine grounds. Without conceding that the sentence or any part of it was infected by error, or that it was manifestly excessive, the Crown did not oppose the granting of leave to appeal. Leave to appeal on all nine grounds was granted by a single judge *upon the papers* on 24 February 2003.

At the outset of the hearing of the appeal on 5 November 2003, the appellant's counsel abandoned five grounds of appeal, including the ground that the sentence was manifestly excessive. Argument was directed to the ground that insufficient regard had been had to his guilty pleas, his youth and his prospects of rehabilitation. The Crown was not called upon to respond.

In an *extempore* judgment, the court unanimously dismissed the appeal and upheld the sentence. The court held that the criminal conduct of the appellant constituted grave examples of the offences of which he was found guilty, and deserved condign punishment. The court held that retribution and deterrence, both general and personal, were at the forefront of the sentencing exercise in this case and that there was a clear need for the punishment to be seen to fit the crime. The court emphasised that such criminal conduct will not be tolerated and will be met with substantial goal terms, even for first offenders.