

R v Talbot, Kenny v R, 12, 30 December 2003
Angel ACJ, Thomas & Bailey JJ
[2003] NTCCA 13

On 17 March 2003, the applicant Kenny, aged 22 years, was found guilty by a Darwin jury of (i) robbery and (ii) assault with intent to steal, each offence accompanied by the circumstances of aggravation that (i) he was in company with another person (the co-offender Talbot), and (ii) he caused bodily harm to the victim. He was acquitted of a charge of unlawful entry into a building at night-time with intent to commit an offence therein. He was sentenced to imprisonment for two years and six months on each count to be served concurrently. A non-parole period of 15 months was fixed.

The facts of the case are set out in the earlier note of *Kenny v R*.

Kenny then applied to the Court of Criminal Appeal for leave to appeal against both conviction and sentence. The application for leave to appeal against conviction is dealt with in the earlier case note. This case note deals with the application for leave to appeal against severity of sentence. The application for leave to appeal against severity of sentence was heard together with the Crown's appeal against inadequacy of sentence in the case of Kenny's co-offender Talbot. In the case of *Kenny v R*, the sole ground of appeal was that the sentencing judge erred in failing to give due weight to the principle of parity in dealing with the applicant.

On 14 November 2002, Talbot, aged 20 years, pleaded guilty to robbery accompanied by the circumstances of aggravation that (i) he was in company with another person (the co-offender Kenny), and (ii) he caused bodily harm to the victim. On 24 February 2003, prior to being sentenced for the robbery, Talbot pleaded guilty to a second indictment containing an additional six counts being two counts of unlawful entry with intent to steal, two counts of stealing, and two counts of unlawfully damaging property.

On 24 February 2003, Talbot was sentenced to imprisonment for three years for the robbery, and to an aggregate sentence of six months imprisonment for the later property offences. It was ordered that four months of the six months sentence be served concurrently with the sentence of three years, resulting in a head sentence of three years and two months imprisonment. It was ordered that the sentence be suspended after Talbot had served 10 months, subject to the offender complying with certain conditions. An operational period of three years from the date of release was fixed.

Kenny's application and the Crown's appeal were heard on 12 December 2003. The decisions in each case were reserved.

In unanimously allowing the Crown's appeal against inadequacy of sentence in the matter of *R v Talbot*, the court held that -

- it is well established that if a young offender commits a criminal offence like an adult then that justifies sentencing him or her in a fashion more akin to an adult

- where crimes of considerable gravity are committed, the protective function of the criminal court would cease to operate unless denunciation, general deterrence and retribution are significant sentencing considerations even in respect of juveniles
- in cases of armed robbery, and particularly where, as in the present case, bodily harm is caused to the robbery victim, condign punishment is necessary; the main sentencing objectives are retribution and deterrence, and the weight to be given to subjective factors is less than in the case of less serious matters
- the repeated violence against a defenceless person called for a substantial sentence
- the victim N had suffered continuing psychological harm as a result of the robbery and had taken up less well-paid employment
- it was an aggravating factor that Talbot was on bail at the time of the armed robbery
- personal and general deterrence were the most significant factors in determining an appropriate sentence. While the subjective mitigating factors in favour of Talbot (his youth, deprived background, addiction to substance abuse) were not to be ignored, such factors could not justify Talbot's rehabilitation as the predominant sentencing objective.

For the offence of aggravated robbery, Talbot was re-sentenced to imprisonment for five years. The sentence of six months for the property offences and the order for concurrent service of the sentences were not challenged on appeal, and remained unchanged. This resulted in a new total effective sentence of five years and two months imprisonment. A non-parole period of two years and seven months imprisonment was fixed.

In the matter of *Kenny v R*, the court unanimously granted leave to appeal against severity of sentence but dismissed the appeal, holding that in the light of the new sentence imposed upon Talbot, and taking into account both the much lesser role played by Kenny in the robbery, and the absence of a discount for a plea of guilty, Kenny could no longer maintain any sense of grievance at the severity of his sentence compared with that of his co-offender.