

**Inkamala v R**

**20 April 2005  
(BR) Martin CJ, Thomas & Riley JJ  
[2005] NTCCA 6**

Following his pleas of guilty in the Alice Springs Supreme Court the appellant, an Aboriginal male aged 31 years, was convicted and sentenced as follows:

- |    |   |                      |
|----|---|----------------------|
| 1. | deprivation of liberty                    | 3 years imprisonment |
| 2. | having sexual intercourse without consent | 8 years imprisonment |
| 3. | having sexual intercourse without consent | 7 years imprisonment |
| 4. | having sexual intercourse without consent | 8 years imprisonment |
| 5. | having sexual intercourse without consent | 8 years imprisonment |

The sentences in respect of counts 2 - 5 were ordered to be served concurrently with each other and cumulatively upon the sentence of 3 years imposed on count 1. The total effective sentence was 11 years imprisonment. In fixing a non-parole period of 7 years and 9 months the sentencing judge was of the view that s.55(1) of the *Sentencing Act* which requires a non-parole period for the offence of rape to be no less than 70% of the head sentence, required him, in the present case, to fix a non-parole period which was no less than 70% of 11 years rather than 70% of 8 years.

Leave to appeal against severity of sentence was granted on 13 October 2004 on the grounds that the sentencing judge erred:

1. in imposing a sentence which was manifestly excessive,
2. in failing to properly apply the totality principle, and
3. in finding that the *Sentencing Act* required him to fix a non-parole period of 70% in respect of the total effective sentence.

The Crown did not oppose the grant of leave on ground 3.

The four offences of rape were committed upon a total stranger over an 11 hour period at different locations after the appellant subdued the victim with violence. The victim was aged 26 years. The appellant had no relevant prior convictions.

On the hearing of the appeal the Crown conceded error in the calculation of the non-parole period on the basis that s.55(1) of the *Sentencing Act* did not apply to the sentence imposed for the offence of deprivation of liberty (count 1). In respect of the count 1, s.54(1) of the *Sentencing Act* required a non-parole period of no less than 50% to be fixed.

The Court allowed the appeal in respect of ground 3 only holding that s.55(1) applied only to counts 2 – 5 and not to count 1. The court dismissed the appeal on grounds 1 and 2 holding that the individual sentences and the total effective sentence were well within the range of the sentencing judge's discretion.

The court quashed the non-parole period of 7 years and 9 months and substituted a non-parole period of 7 years. The individual head sentences and the total effective sentence of 11 years were not disturbed.