

Pappin v R

**7 & 18 February 2005
(BR) Martin CJ, Angel & Southwood JJ
NTCCA 2**

The appellant, pleaded guilty in the Alice Springs Supreme Court to one count of assault together with the following circumstances of aggravation (i) that the victim suffered bodily harm (ii) the victim was a female and offender a male and (iii) the victim was under the age of 16 years and the offender was an adult.

He was sentenced to imprisonment for 2 years and 3 months. It was ordered that the sentence be suspended after he had served 9 months. An operational period of 2 years from his date of release was fixed.

At the time of the offence the appellant was aged 18 years and one month. The victim was a year 9 student aged 15 years and 5 months. Prior to the offence both the appellant and the victim consumed alcohol at different locations in Alice Springs. The sentencing judge found the appellant to be heavily intoxicated. They were not known to each other. As they each walked home along the Gap Road, their paths crossed at 3.00 am. The appellant pulled the girl to the ground, sat astride her, bit her forcefully on her right cheek, right forearm, under her left arm and once above her right breast. He stuck his fingers down her throat and put one hand over her nose. She managed to break free, got up but was pulled to the ground again. Nearby residents heard the screams for help and called the police who arrived in time to catch the offender decamping from the scene.

The appellant had no prior convictions. The sentencing judge found the appellant to be a person of positive good character. The appellant had no satisfactory explanation for the attack. The sentencing judge found it to be a *bizarre, drunken attack*.

The offender subsequently applied to the Court of Criminal Appeal for leave to appeal against severity of sentence. Leave to appeal was granted by a single judge exercising the powers of the Court of Criminal appeal on 30 August 2004 on the grounds that the sentence was manifestly excessive and that the sentencing judge had made significant errors.

The court unanimously dismissed the appeal holding that:

1. The sentencing judge had made no error in finding that the victim had suffered psychological injury. The court noted that in her victim impact statement the victim spoke of how scared she was, how she thought the appellant was going to kill her and how scared she was now to walk by herself and to be by herself at home. As to the argument that there was no evidence to support the finding that the victim had suffered psychological injury, the court held that the sentencing judge was not engaged in an exercise of making a technical finding or medical diagnosis. Rather, she was delivering sentencing remarks in language that would be understood by the appellant and the community. In that context a finding of “psychological” injury was well justified by the victim impact statement which the sentencing judge specifically accepted. The sentencing judge did not require a psychiatric or psychological report to justify a conclusion that the victim had suffered, in lay terms, “psychological injury”.

2. The sentencing judge had not failed to take into account the period of 4 months during which the appellant was on bail and subject to a curfew between the hours of 9:00 pm and 6:00 am. The appellant put to the sentencing judge that the conditions were “somewhat akin to being a person on home detention”. The court held that if, by reason of restrictive bail conditions, the liberty of an offender has been significantly curtailed, it is open to a sentencing court to take that fact into account. Generally speaking, however, it will not be an error to decline to do so. The point of error will only be reached if the nature of the curtailment of liberty and the period of that curtailment demonstrates that in substance the offender has already suffered a penalty of significance. The case for a reduction may be greater if the stringent conditions of bail were imposed by reason of a more serious charge which was subsequently withdrawn. The circumstances of the present case were not such as to warrant a finding that by reason of the restrictive bail conditions the appellant had already suffered a penalty of such significance that it should be reflected in a lesser sentence.
3. As with addiction to other drugs, there is no general rule that intoxication by reason of the consumption of alcohol is an aggravating or mitigating factor. In some circumstances, it may operate on the sentencing process in both ways or it may be a neutral factor. Considerable weight might be given to intoxication as a factor of mitigation when an offender of previously unblemished character commits a minor offence which was totally out of character by reason of intoxication. At the other end of the scale, very little weight can be given if, by reason of intoxication, the same person acts out of character but commits a particularly serious crime of violence. In the present case intoxication was both an aggravating factor and a mitigating factor. In the weighing exercise, the court found that they effectively cancelled each other out leaving intoxication as having a neutral impact upon the sentencing discretion.
4. The head sentence was not manifestly excessive. The court was of the view that the sentence of 2 years and 3 months (reduced from 3 years on account of the appellant’s plea of guilty), although at the upper end of the sentencing discretion for a young person of good character who, through intoxication, acted out of character, was not beyond the proper range of that sentencing discretion.
5. Requiring the appellant to serve 9 months did not result in a sentence which was manifestly excessive. Further, the sentencing judge was not obliged to give specific reasons for being satisfied that the sentence be suspended. Having set out comprehensively the facts of the offending and matters personal to the appellant which were relevant to and had been taken into account when fixing the head sentence and when dealing with the issue of suspension, it was not further incumbent on the sentencing judge to specifically relate particular features to the issue of suspension.

