

**Spencer v R**

**19, 29 April 2005  
(BR) Martin CJ, Thomas & Riley JJ  
[2005] NTCCA 3**

In September 2003, after an Alice Springs jury found the appellant not guilty of murder but guilty of manslaughter, he was sentenced to imprisonment for 14 years. A non-parole period of 9 years was fixed. Leave to appeal against severity of sentence was granted on 9 July 2004. On the hearing of the appeal several grounds of interest were argued.

**The offer(s) to plead guilty to manslaughter.**

The appellant had in fact been tried twice for the offence of murder. On the first occasion the jury found him guilty of murder. That conviction was quashed on appeal because of inadequate directions regarding intoxication. See *Spencer v The Queen* (2003) 172 FLR 471. A re-trial was ordered. Prior to the first trial the defence offered to plead guilty to manslaughter. That offer was rejected by the Crown. Prior to the re-trial, the defence again offered to plead guilty to manslaughter. Again, that offer was rejected by the Crown.

In the present appeal it was argued that the appellant's offer could have been accepted in 2001 or in 2003 and any dispute as to the facts could have been resolved by the calling of evidence on the plea. Thus it was submitted that the offer was deserving of a real reduction of sentence as it demonstrated a willingness to facilitate the course of justice.

In order to determine the weight to be given to the offer(s) the court examined the circumstances of each trial and observed that notwithstanding the offers to plead guilty to manslaughter, the appellant did not do so. In delivering the judgment of the court, Riley J observed that at the commencement of each trial the appellant had the opportunity to plead not guilty to murder but guilty to manslaughter but did not do so electing to preserve his chance of an outright acquittal. Riley J observed that in such circumstances an indication by an accused person of a willingness to plead to a particular charge should not be equated with that person in fact pleading guilty to that charge.

The sentencing judge had characterised the offers made by the appellant as "self interested manoeuvring" which he concluded was not evidence of remorse. The Court of Criminal Appeal agreed noting the conditional nature of each offer and the fact that he chose to place all matters in issue in each trial indicated only a limited willingness to facilitate the course of justice.

**Appellant's moral culpability**

On the issue of the offender's moral culpability the Court again took the opportunity to emphasize a number of propositions, namely,

- the need to protect the community and in particular women, children and the vulnerable in the community from violence associated with the excessive

consumption of alcohol citing its earlier decision in *Inness Wurraramara v The Queen* (1999) 105 A Crim R 512,

- that courts must ensure there is no basis for a belief within any particular community, or in the wider community, that serious violence committed by drunken persons within a particular community is to be treated more lightly than is generally the case citing *Fernando v The Queen* (1992) 76 A Crim R 58 at 62 and *R v Ceissman* [2001] NSWCCA 73 at para 29, and
- the fact that an offender and/or his victim may come from an Aboriginal community which is deprived or dysfunctional and where alcohol abuse and violent crime may be prevalent and more tolerated than in the general community does not mean that lower sentences should prevail.

### **Intoxication**

On the issue of intoxication and foresight, Riley J observed that this was not a case where the appellant was an offender of previously unblemished character committing a minor offence which was totally out of character by reason of intoxication.

The appellant had a significant criminal history stretching from 1976 – 1995 for numerous aggravated assaults for the offence of doing a dangerous act causing death. In terms of the court's earlier decision in *Pappin v R* [2005] NTCCA 2 the appellant in this case, whilst affected by alcohol, was not acting out of character and he was not unaware of what he was doing.

The Court unanimously dismissed the appeal holding that none of the grounds had been made out. The sentence had not been shown to be manifestly excessive given (i) the fact that the appellant had stabbed the deceased with a knife 18 times, (ii) the fact that the appellant's criminal history demonstrated a propensity for violence when intoxicated and an on-going disobedience of the law in a particular way and (iii) his lack of remorse.