CITATION:	*Lalara v Andreou* [2018] NTSC 75
PARTIES:	LALARA, Cameron v ANDREOU, Andreas
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	APPEAL from LOCAL COURT exercising Territory jurisdiction
FILE NO:	LCA 37 of 2018 (21800642)
DELIVERED:	1 November 2018
HEARING DATE:	31 October 2018
JUDGMENT OF:	Riley AJ

CATCHWORDS:

CRIMINAL LAW – PROPERTY OFFENCES – AGGRAVATED ASSAULT – APPEAL AGAINST SENTENCE

Whether sentence was manifestly excessive – whether non-parole period was manifestly excessive – non-parole period set above statutory minimum – applicable principles.

Sentencing Act (NT) s 51

Power v The Queen (1974) 131 CLR 623; *JF v The Queen* [2017] NTCCA 1; *The Queen v Shrestha* (1991) 173 CLR 48; *R v Bugmy* (1990) 169 CLR 525.

Fox and Freiberg, Sentencing: State and Federal Law in Victoria 3rd ed Thomson Reuters, Sydney, 2014.

REPRESENTATION:

Counsel:

Appellant:	Julia Ker
Respondent:	Rebecca Everitt

Solicitors:

Appellant:	Northern Territory Legal Aid Commission
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	C
Judgment ID Number:	Ril1803
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Lalara v Andreou [2018] NTSC 75
No. LCA 37 of 2018 (21800642)

BETWEEN:

CAMERON LALARA
Appellant

AND:

ANDREAS ANDREOU
Respondent

CORAM: RILEY AJ

REASONS FOR JUDGMENT

(Delivered 1 November 2018)

[1] On 23 May 2018 the appellant pleaded guilty before the Local Court, sitting at Alyangula, to seven offences in relation to which he was sentenced to imprisonment for a period of three years. The sentence was ordered to commence four months after the commencement of a sentence of 12 months imprisonment imposed on the same date for unrelated offending. That sentence was in turn backdated to commence on 15 January 2018 resulting in a total effective sentence of imprisonment for three years and four months from 15 January 2018. The learned Local Court Judge ordered that there be a non-parole period of two years and four months.

[2] The appeal is limited to a contention that the non-parole period of two years and four months was manifestly excessive. There is no complaint regarding the individual sentences imposed in respect of each count nor to the total effective head sentence of three years imprisonment either by itself or in combination with the other sentences imposed on that day.

[3] Notwithstanding that there is no challenge to the sentences imposed in the Local Court it is necessary to recount those matters in order to understand the nature of the relevant offending. The offending was as follows:

(a) on 2 December 2017 one count of aggravated unlawful entry;

(b) on 2 December 2017 one count of intentionally or recklessly cause damage to property;

(c) on 2 December 2017 one count of stealing;

(d) on 2 December 2017 one count of aggravated assault against Gihan Amarasekara;

(e) on 2 December 2017 one count of aggravated assault against his partner Kaysha Nunggunmajbarr;

(f) on 11 December 2017 one count of aggravated unlawful entry;

(g) on 11 December 2017 one count of stealing.

[4] The offending which occurred on 2 December 2017 related to the appellant and three co-offenders unlawfully entering the Groote Eylandt Lodge for the

purposes of stealing alcohol. They drove to the Lodge shortly after midnight and smashed a hole in a window. They stole alcohol valued at $1173.02. In the process they were confronted by the Lodge manager, Mr Amarasekara. The appellant and others armed themselves with wooden sticks and threatened him. They then got into a vehicle and drove a short distance before leaving the vehicle. One of the co-offenders threatened Mr Amarasekara again. The appellant and co-offenders then loaded a wheelie bin they had filled with alcohol into the car and drove away. The offenders, including the appellant, consumed the alcohol. The cost of repairing the damage to the window was assessed at $10,000.

[5] Later that morning the appellant, who was then intoxicated, went home and woke his sleeping partner. An argument over jealousy issues occurred and the appellant punched his partner to her face on three occasions. The assault caused the victim to lose two front teeth and drove a third tooth through the roof of her mouth.

[6] On 11 December 2017 the appellant was at the Umbakumba community with others and they broke into the Community Store by using an axe to break through roof sheets. They stole an assortment of items valued at around $3000.

[7] All of the offending occurred whilst the appellant was on bail for earlier offending.

[8] The appellant, who was aged 21 years at the time, had a regrettable criminal history going back to 2012. The history included five convictions for aggravated assault in relation to which he had been sentenced to imprisonment for periods of 12 months, one month, two months, six months and four months respectively. He also had seven convictions for engaging in conduct that contravened a domestic violence order. He had a conviction for going armed in public, three convictions for aggravated unlawful entry of buildings, two for damaging property, two for unlawful use of a motor vehicle and a number of findings relating to breaching orders of suspended sentences, community service orders, failing to comply with youth court orders and breaching bail. A number of the offences of violence were committed against the partner of the appellant, the victim in one of the present matters.

[9] In the sentencing remarks the Local Court Judge indicated that because of the number of charges her Honour had reduced some of the sentences and directed that some sentences be served concurrently. Her Honour allowed a reduction of 25% for the pleas of guilty. Her Honour expressly referred to the age of the appellant, 21 years, and the fact that he was still a young person. Her Honour acknowledged that he had a supportive family some of whom were then present in court. The fact that he had been on bail and handed himself in for sentencing was acknowledged.

The non-parole period

[10] The *Sentencing Act* provides that a court may impose a single non-parole period in respect of the aggregate period of imprisonment.[1] The non-parole period fixed must be no less than 50% of the period of imprisonment that an offender is liable to serve.[2] The sentencing Judge set a non-parole period of two years and four months and the appellant contends this was manifestly excessive.

[11] The sentence was delivered effectively ex tempore in a busy bush court by an experienced Local Court Judge. The non-parole period of two years and four months was 70% of the period of imprisonment that the appellant was liable to serve. In imposing that non-parole period her Honour did not provide any explanation for doing so. However, in the sentencing remarks her Honour referred to matters which were also relevant to determining a non-parole period including the young age of the appellant, his significant history of relevant offending, his poor history of compliance with court orders including those directed at the protection of his partner and those directed towards his rehabilitation, his supportive family and the fact that he handed himself in for the purposes of sentence.

[12] Particular reference was made to the violent conduct of the appellant against his partner which was described as “horrific” with the observation that she had been the victim of continued serious violence from the appellant over a

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1 *Sentencing Act* s 53(2)

2 *Sentencing Act* s 54(1)

period of years “perhaps the whole duration of your relationship with her from when you were a youth under the courts and now you are an adult”. The fact that previous sentences had not deterred the appellant from further violent conduct and other further offending was noted. The sentencing Judge acknowledged that the appellant had witnessed violence as a regular occurrence growing up and observed, correctly, that this did not mean that such conduct was acceptable.

[13] In this Court the submission made on behalf of the appellant was that he was not without prospects for rehabilitation. It was noted that he had a supportive family, that he had not yet undertaken drug rehabilitation for which he had been assessed and found suitable, that he cooperated with police, that he had thought about a pathway to employment albeit without taking further steps, that he was intending to relocate to Umbakumba to reduce his exposure to circumstances likely to lead to reoffending and that he had indicated a willingness to make restitution from future royalty payments to become due to him. All of those matters were put to her Honour and were taken into account in determining the head sentence.

[14] The sole ground of appeal is that the non-parole period imposed as part of the sentence was manifestly excessive. It is fundamental that the exercise of the sentencing discretion is not disturbed on appeal unless error in that exercise is shown. The presumption is that there is no error and the appellate court does not interfere with the sentence imposed merely because it is of the view that the sentence is excessive. It interferes only if it be shown that

the sentencing Judge was in error in acting on a wrong principle or in misunderstanding or in wrongly assessing some salient feature of the evidence. The error may appear in what the sentencing Judge said in the proceedings or the sentence itself may be so excessive as to manifest such error. It is incumbent upon the appellant to show that the sentence was not just excessive but manifestly so.

[15] The offending was plainly serious. The non-parole period the appellant had to serve was required to be "the minimum time that a judge determines justice requires that (the offender) must serve having regard to all the circumstances of his offence".[3] There is no obligation to set the non-parole period at the statutory minimum but, rather, it must be set at the minimum time that justice requires.

[16] Her Honour did not impose the minimum non-parole period set by statute, which would have been for a period of one year and eight months. Her Honour did not provide reasons for determining that the length of the non-parole period should be two years and four months.

[17] A consideration of the reasons for sentence suggests a possible basis for the imposition of a longer term than the minimum. As her Honour observed in determining the head sentence, the appellant had committed very serious offences including a vicious attack upon his partner who was a person assaulted by him on other occasions. He had a history of failing to comply

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3 *Power v The Queen* (1974) 131 CLR 623 at 629; *JF v The Queen* [2017] NTCCA 1

with court orders including those designed to protect the community from his violence and he also had a poor history of compliance with other orders of the court. On the other hand he was a relatively youthful offender and must be regarded as not being beyond rehabilitation. His prospects assessed at the time of sentencing by her Honour were poor. Whilst those matters informed the decision to impose the head sentence it is not clear what factors were taken into account by her Honour in determining the non-parole period, what weight was given to such matters and why it was that a period significantly in excess of the statutory minimum non-parole period was set.

[18] The nature of parole and the relevant considerations in determining the appropriate period for a non-parole order have been considered in a number of cases. In *The Queen v Shrestha*[4] Deane, Dawson and Toohey JJ stated:

> The basic theory of the parole system is that, notwithstanding that a sentence of imprisonment is the appropriate punishment for the particular offence in all the circumstances of a case, considerations of mitigation or rehabilitation may make it unnecessary, or even undesirable, that the whole of the sentence should actually be served in custody … the parole system allows for a review of the offender's case after he has actually served a significant part of a custodial sentence, for the purpose of deciding whether he should be released on parole at that stage.…
>
> All of the considerations which are relevant to the sentencing process, including antecedents, criminality, punishment and deterrence, are relevant both at the stage when a sentencing judge is considering whether it is appropriate or inappropriate that the convicted person be eligible for parole at a future time and at the subsequent stage when the parole authority is considering whether the prisoner should actually be released on parole at or after that time … the legislative intent to be gathered from the terms of the parole legislation applicable in that case

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4 *The Queen v Shrestha* (1991) 173 CLR 48 at 67-69

> … was to provide for possible mitigation of the punishment of the prisoner only when the stage is reached where "the prisoner has served the minimum time that a judge determines justice requires that he must serve having regard to all the circumstances of his offence". This approach has been consistently accepted in subsequent cases in this court.

[19] In *Power v The Queen*[5] it was said the legislative intention with respect to parole is to:

> … provide for mitigation of the punishment of the prisoner in favour of his rehabilitation through conditional freedom, when appropriate, once the prisoner has served the minimum time that a judge determines justice requires that he must serve having regard to all the circumstances of his offence.

[20] As was observed in *JF v The Queen*[6], a useful summary of the relevant principles and factors generally applied when setting the non-parole period is provided in Fox and Freiberg's sentencing text[7] as follows (footnotes omitted):

> The non-parole period must be proportionate to the head sentence and to the gravity of the crime. Proportionality cannot be reduced to a mathematical formula and will depend upon the circumstances of the case and subject to the judicial discretion. As a general rule there should not be too great a disparity between the head sentence and the non-parole period. In the absence of statutory authority, there is no usual or fixed rule regarding the relationship between the head sentence and the non-parole period and the length of the period on parole is a matter of discretion that will depend upon all of the circumstances of the case including the offender's prospects of rehabilitation, age (both young and old), criminal record and past parole history, and protection of the community. Because some of these circumstances are personal to

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5 (1974) 131 CLR 623 at 629 per Barwick CJ, Menzies, Stephen and Mason JJ; confirmed in *R v Bugmy* (1990) 169 CLR 525 at 536.

6 *JF v the Queen* [2017] NTCCA 1 at [62].

7 Fox and Freiberg, Sentencing: State and Federal Law in Victoria (Thomson Reuters, 3rd ed, 2014) at 859.

> the offender, there may be more scope for variation in the length of non-parole periods than there may be in setting head sentences…

[21] In the present case the appellant's prospects for rehabilitation were poor. However, he was relatively young and he had not had the opportunity of undertaking relevant rehabilitation programs, particularly directed towards his problems with alcohol, cannabis and anger management. He had indicated a willingness to undertake appropriate rehabilitation. He had by his attendance at court for sentencing provided a limited demonstration of his willingness to comply with court orders. As the learned sentencing Judge observed the Parole Board would, at the time of considering a grant of parole, be in a better position to ascertain what is needed in relation to any rehabilitative or other programs than her Honour.

[22] No specific reason was provided by her Honour before imposing a non-parole period well beyond the minimum required by statute. In my opinion the non-parole period was, in all the circumstances, manifestly excessive.

[23] I allow the appeal. I set a new non-parole period of one year and eight months. The sentence is otherwise untouched.