Lloyd v The Queen [2013] NTCCA 11

PARTIES:	**LLOYD, Kane** v **THE QUEEN**
TITLE OF COURT:	COURT OF CRIMINAL APPEAL OF THE NORTHERN TERRITORY
JURISDICTION:	CRIMINAL APPEAL FROM THE SUPREME COURT EXERCISING TERRITORY JURISDICTION
FILE NO:	CCA 17 of 2013 (21239373)
DELIVERED:	4 September 2013
HEARING DATE:	4 September 2013
JUDGMENT OF:	RILEY CJ, SOUTHWOOD and HILEY JJ
APPEALED FROM:	KELLY J

CATCHWORDS:

APPEAL AGAINST SENTENCE – Manifestly excessive – argument that sentence outside the range of sentences of comparable nature with similar antecedent – sentence of three years imprisonment to be suspended after nine months – appellant unable to demonstrate the sentencing discretion has miscarried – no tariff of penalties for crime of assault given the infinite variety of circumstances to offending and offender – significant weight to punishment, community protection and general deterrence appropriate – sentence by no means crushing – appellant did not show that sentence was clearly and obviously, and not just arguably excessive – no striking disparity with the customary standards of sentencing for assault - appeal dismissed.

Hedgecock v The Queen [2008] NTCCA 1
Morrow v The Queen [2013] NTCCA 7

REPRESENTATION:

Counsel:

Appellant:	I Read SC
Respondent:	W J Karczewski QC and D Jones

Solicitors:

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

Judgment category classification:	B
Judgment ID Number:	Sou1310
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IN THE COURT OF CRIMINAL APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Lloyd v The Queen [2013] NTCCA 11
No. CCA 17 of 2013 (21239373)

BETWEEN:

KANE LLOYD
Appellant

AND:

THE QUEEN
Respondent

CORAM: RILEY CJ, SOUTHWOOD and HILEY JJ

REASONS FOR JUDGMENT
Ex Tempore
(Delivered 4 September 2013)

THE COURT:

Introduction

[1] On 20 March 2013 the appellant pleaded guilty to committing the crime of unlawfully cause serious harm to Paul Levaillant contrary to s 181 of the *Criminal Code* on 29 September 2012. He was sentenced to a term of imprisonment of three years to be suspended after he had served nine months in prison on condition that he place himself under the supervision of the Director of Community Corrections for a period of three years. The head sentence was reduced from four years to three years to reflect the appellant's plea of guilty.

[2] The appellant now appeals the sentence. He relies on two grounds of appeal. First, in the circumstances of this offending a starting point of four years was disproportionate to the offending. Second, the sentence was manifestly excessive.

[3] The appellant's principal submission is that the sentence imposed on him was outside the relevant range of sentences for offending of a comparable nature with similar antecedents. In this regard, the appellant was particularly concerned with the term of actual imprisonment of nine months. The first ground of appeal is really an argument in respect of the second ground of appeal. In support of the appellant's principal submission Senior Counsel for the appellant relied on a table of 17 sentences where the victim suffered a broken jaw.

The facts

[4] The admitted facts were as follows.

[5] At the time of the offending the appellant was 30 years of age. He had lived in the Northern Territory for seven years. He is a carpenter by trade and he worked as a self employed sub-contractor. The appellant is in a de facto relationship. At the time of sentencing he and his partner had one child who was five months old and they were expecting their second child. The appellant was the primary bread winner for his family and they had a mortgage to pay. He was a hard worker who was held in high regard by his workmates.

[6] The appellant has a criminal record which includes traffic offences. He committed an offence of recklessly causing injury in 2003 where no conviction was recorded and he was required to perform community service and undertake an anger management course. In 2010 he was convicted of common assault for which he was fined $1000.

[7] At the time of the offending the victim was 20 years of age. He worked as a tree lopper.

[8] On Saturday 29 September 2012 the victim and a friend attended the Howard Springs Tavern to watch the AFL Grand Final. The appellant was also at the tavern.

[9] The offender and the victim were unknown to each other. Both the victim and his friend decided to play a game of pool. The appellant was sitting on a bar stool watching the game. At one point the victim played a bad shot and he struck the pool table with the cue in frustration. The appellant yelled out to him, “Oi we all have to use those cues”. The victim replied, “Fair enough”.

[10] The appellant continued to remonstrate with the victim about his use of the cue. Eventually, the victim said, “It is not even your cue, so what do you care, so fuck off.” At this point the appellant got off his chair and moved towards the victim who thought he was going to the front door of the tavern. The appellant then punched the victim multiple times about the head and

body. Other patrons and security personnel had to physically intervene to prevent the assault on the victim from continuing.

[11] After the assault the victim and his friend left the tavern. The victim went home and took some panadol and rested. The next day his jaw was still sore and his bite was misaligned. He went to the Royal Darwin Hospital where he was diagnosed as having suffered comminuted fractures of the right and left angle of the chin. He was asked to re-attend the hospital on 2 October 2012 when he was treated by way of internal fixation of the fractures with screws and plates.

Objective seriousness

[12] The assault upon the victim was a sustained and unprovoked assault. It was committed in a tavern. The victim was punched multiple times by the appellant. The appellant had to be restrained from continuing to assault the victim. He did not voluntarily desist. The victim was caught by surprise and was unable to defend himself. His chin was fractured in two places. He was required to be hospitalised and to undergo significant surgery in order to repair the injury. Such assaults are prevalent and place considerable demands on scarce medical resources. There was no explanation for the attack upon the victim other than the appellant had a “brain snap”.

Subjective circumstances

[13] The appellant was not a first offender and he showed little or no remorse for his conduct. He was more concerned about the predicament in which he and his family had been placed as a result of his criminal conduct.

The suggested sentencing range

[14] As to the grounds of appeal, we accept the submissions of the Director of Public Prosecutions that the appellant has been unable to demonstrate that the sentence in the instant case affords any convincing evidence that the sentencing discretion has miscarried.

[15] Each of the cases referred to in the appellant's table involved a plea of guilty and in some cases a discount of 25 per cent. In those cases where a discount of 25 per cent was indicated, the head sentence before discount ranged from two years and eight months to four years. Furthermore, the appellant's table of sentences did not demonstrate that a period of actual imprisonment of nine months was outside any established range. Indeed, the appellant's table did not demonstrate that there is a particular range of sentences applicable to this category of case of serious harm. Rather, the sentences referred to in the appellant's table reflect the circumstances applicable to the individual case. They do not reflect a defined range of sentences.

[16] This court has consistently said that there is no tariff in respect of penalties imposed for the crime of assault given the infinite variety of circumstances that are relevant to the offending and the offender.[1]

[17] It was appropriate for the sentencing judge to give significant weight to punishment, protection of members of the community and general deterrence. The sentence, including the actual term to be served, was by no means a crushing sentence. The sentence reflected that the appellant had reasonable prospects of being rehabilitated and it facilitates his rehabilitation. The hardship that may be suffered by the appellant's family as a result of his incarceration is not exceptional hardship.

[18] It is for the appellant to show that the nature of the sentence in this case affords convincing evidence that in some way the exercise of the sentencing discretion was unsound. To do so, he was required to show that the sentence was clearly and obviously, and not just arguably excessive.[2] He has not done so. The sentence imposed by the sentencing judge was consistent with the standards of sentencing customarily observed with respect to the crime committed by the appellant. There is no striking disparity which would justify interference by this Court.

[19] The appeal is dismissed.

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[1] *Morrow v The Queen* [2013] NTCCA 7 at [35].
[2] *Hedgecock v The Queen* [2008] NTCCA 1 at [21].