HIGH COURT OF AUSTRALIA

15 June 2016

BETTS v THE QUEEN

[2016] HCA 25

Today the High Court unanimously dismissed an appeal from a decision of the Court of Criminal Appeal of the Supreme Court of New South Wales. The High Court held that the general rule – that the appellate court's assessment of whether some other sentence is warranted in law is made on the material before the sentencing court and any relevant evidence of post-sentence conduct – applied to the appellant's case. However, the Court noted that the general rule does not deny that an appellate court has the flexibility to receive new evidence where it is necessary to do so to avoid a miscarriage of justice.

On 17 April 2010, the appellant stabbed the complainant, his former partner, some 28 times in a sustained attack. He pleaded guilty in the District Court of New South Wales to wounding with intent to murder, and detaining the complainant without her consent with intent to obtain a psychological advantage, and immediately before the detaining, occasioning actual bodily harm to her. For the offence of wounding with intent, the appellant was sentenced to 16 years' imprisonment with a non-parole period of 11 years. He was sentenced to a concurrent eight year term of imprisonment for the detaining offence.

The appellant appealed to the Court of Criminal Appeal against the severity of the sentences. At the commencement of the hearing in that Court, the appellant produced a folder of additional material on the basis that it would be admissible in the event that the Court came to re-sentence the appellant. The prosecutor did not object to the Court receiving the additional material "on the usual basis". The additional material included a report by Dr Nielssen, a psychiatrist. He opined that the appellant's intoxication with a hallucinogenic drug, together with an underlying emotional state shaped by violence and sexual abuse in childhood, and a pattern of substance use, significantly contributed to his offending behaviour. Having found error in the trial judge's application of sentencing principle, the Court of Criminal Appeal turned to consider the exercise of its sentencing discretion. The Court declined to take into account Dr Nielssen's opinion concerning factors that may have caused or contributed to the commission of the offences, holding that the sentence hearing had been the occasion to address these matters.

By grant of special leave, the appellant appealed to the High Court. The appellant contended that the Court of Criminal Appeal erred in refusing to take into account Dr Nielssen's opinion. The High Court held that Dr Nielssen's opinion was based on a history which seemed to depart from the agreed facts on which the appellant was sentenced, and that his opinion that the appellant was in a psychotic state, or its equivalent, appeared to traverse the appellant's pleas. Their Honours held that nothing in the additional material supported the appellant's submission that the Court of Criminal Appeal's refusal to permit him to run a different case before it had occasioned a miscarriage of justice.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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