



HIGH COURT OF AUSTRALIA

2 October 2013

ERNEST MUNDA v THE STATE OF WESTERN AUSTRALIA [2013] HCA 38

Today the High Court, by majority, dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of Western Australia, which had allowed an appeal against the original sentence imposed on Mr Ernest Munda for the manslaughter of his de facto spouse ("the deceased") on the basis that it was manifestly inadequate.

On 12 July 2010, Mr Munda and the deceased attended a local tavern. Both became intoxicated and Mr Munda used some cannabis. When they returned to their house, an argument developed which soon turned violent. Mr Munda punched the deceased on numerous occasions, threw her about the bedroom and repeatedly rammed her head into the wall. After Mr Munda had finished assaulting the deceased, they both went to sleep. The next morning, Mr Munda had sexual intercourse with the deceased. He then briefly left the house. When he returned, he noticed that the deceased had stopped breathing. The deceased was transported to hospital but was pronounced dead on arrival. She had died from traumatic brain injury.

Mr Munda pleaded guilty to manslaughter and was sentenced in the Supreme Court of Western Australia to a term of imprisonment of five years and three months, with a non-parole period of three years and three months. The sentencing judge took Mr Munda's personal circumstances into consideration as a mitigating factor, noting that he was a traditional Aboriginal man who had been exposed to the negative influences of alcohol and family violence from a young age. The Court of Appeal allowed the State's appeal against the sentence and resented Mr Munda to seven years and nine months imprisonment. Mr Munda remained eligible for parole.

By special leave, Mr Munda appealed to the High Court on the grounds that the Court of Appeal failed to correctly apply the principles concerning State appeals against sentence and that it failed to give proper regard to Mr Munda's antecedents and personal circumstances. A majority of the High Court upheld the Court of Appeal's decision that the original sentence was manifestly inadequate. While it was relevant to take into consideration an offender's circumstances of severe social disadvantage, the High Court held that the same sentencing principles must be applied in every case irrespective of an offender's identity or his or her membership of an ethnic or other group. It was also held that the Court of Appeal did not err in not exercising its residual discretion to refuse to allow the State's appeal.

- *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.*