

BETTS v THE QUEEN (S281/2015)

Court appealed from: New South Wales Court of Criminal Appeal
[2015] NSWCCA 39

Date of judgment: 24 March 2015

Special leave granted: 11 December 2015

In May 2012 Mr Joel Betts was sentenced by Judge Toner for wounding his ex girlfriend, Ms Samantha Holland, with intent to murder her, contrary to s 27 of the *Crimes Act 1900* (NSW) (“the Crimes Act”). He was also sentenced for detaining Ms Holland without her consent with the intent of obtaining an advantage, namely a psychological advantage, and immediately before the detaining actual bodily harm was occasioned to her. This was contrary to s 86(2B) of the Crimes Act. The offences themselves occurred when Mr Betts and Ms Holland were alone at the apartment that they formerly shared in April 2010. It is common ground that Ms Holland received multiple stab wounds during the attack, while Mr Betts himself was also badly injured. After allowing a 10% discount for Mr Betts’ guilty pleas, Judge Toner sentenced him to an effective term of 16 years imprisonment, with a non-parole period of 11 years.

Mr Betts subsequently appealed against his sentence, submitting inter alia that the sentencing judge erred:

- i) in finding that the offences were aggravated, because the victim was “vulnerable” within the meaning of s 21A(2)(l) *Crimes (Sentencing Procedure) Act 1999* (NSW); and
- ii) in finding that the effect of his own injuries (sustained during the fight with Ms Holland) were relevant only to the question of special circumstances, and thus only to the term to be served by way of the non-parole period, rather than relevant also to the head sentence.

On 24 March 2015 the Court of Criminal Appeal (Meagher JA, Hidden J & RS Hulme AJ) unanimously upheld these two grounds of appeal, while also dismissing two other grounds of appeal. With respect to the first of those grounds, their Honours noted that s 21A(2)(l) “is concerned with the weakness of a particular class of victim and not with the threat posed by a particular class of offender”. They held that, in finding that Ms Holland was vulnerable because she was alone in the apartment with Mr Betts and at his mercy, indicates that his Honour did not direct attention to the correct operation and limits of subparagraph (l). While acknowledging that Ms Holland was vulnerable, the Court of Criminal Appeal found that that vulnerability arose because of the particular events of the day, not because of the characteristics of any group of which she was a member. With respect to the second of those listed grounds, their Honours held his Honour erred in limiting the significance of Mr Betts’ own injuries as he did.

Despite these errors, the Court of Criminal Appeal still upheld the sentence imposed by Judge Toner. Their Honours were “not persuaded” that a sentence other than the one imposed by the sentencing judge was warranted.

The ground of appeal is:

- The Court of Criminal Appeal, when determining whether a less severe sentence than that originally imposed was warranted, erred in failing to take into account new evidence bearing on the causes of the Appellant’s offending.