

45/97

SUPREME COURT OF NEW SOUTH WALES – COURT OF CRIMINAL APPEAL

R v ROWE

Hunt CJ at CL, Smart and Ireland JJ

3 October 1996 — (1996) 89 A Crim R 467

SENTENCING – DOMESTIC VIOLENCE CASES – RELEVANCE OF FORGIVENESS BY COMPLAINANT.

HELD: Whilst forgiveness by the victim may be relevant to sentencing in some cases, exceptional caution is required in allowing such evidence to be given in relation to domestic violence type offences. In such cases, the importance of general deterrence overrides any minor relevance that evidence of forgiveness might have.

HUNT CJ at CL: "... [472] The applicant's fifth submission is that the judge gave insufficient weight to the wishes of the complainant. This Court has said more than once that the attitude of complainants cannot govern the approach to be taken in sentencing. In *Glen* (unrep., NSW Court of Criminal Appeal, 19 December 1994), Simpson J pointed out that, whilst forgiveness by the victim may be relevant [473] in some cases, exceptional caution is required in allowing such evidence to be given in relation to domestic violence type offences. The present offences fell within the same category, where the nature of the relationship between the offender and the victim is such that the victim will frequently, and clearly contrary to their own interests and welfare, forgive their attacker. The importance of general deterrence in such cases overrides any minor relevance that evidence of forgiveness might have. I accept her Honour's reasoning as to why that should be so. It is unnecessary to repeat what she said there.

This Court has also said more than once that the hardship upon the family of an offender will not be relevant in mitigation unless it goes beyond that which inevitably results in any case of incarceration and unless it is sufficiently extreme as to demand that the judge draw back (see eg *R v Boyle* (1987) 34 A Crim R 202 at 204-206; *R v T* (1990) 47 A Crim R 29 at 40. That has not been established in this case. It may be ironic, as has been suggested, that the victim and her children are also going to suffer the punishment imposed upon the offender, but the fact remains that the law requires such a punishment to be imposed. All that the applicant says here is that it would not have offended sentencing principles to give greater weight to the complainant's wishes. That is not an argument which can be put to this Court, which (as I have already pointed out) does not rehear these matters until error has been established. It has not been established here.

Finally, it was submitted that the subsequent marriage of the couple and the application shows that the future relationship between them is assured. I do not see any particular weight in this submission. It is obvious from the psychologist's report that, should the applicant again suspect that the complainant has been unfaithful, the same thing is likely to happen again ..."