

Legal asst. part b essay samples

[Law](#), [Criminal Justice](#)



Magistrates and judges must take into consideration a wide variety of factors in determining the sentencing of offenders. The sentence must primarily coincide with the statutory guidelines that implicated in the Crimes Act 1999 (Sentencing Procedure) (NSW), and guidelines set out by the judicial system that creates precedent for all the magistrates and judges within the country. In regards to the extent of the law the purpose of sentencing fundamentally include, incapacitation, rehabilitation, retribution, and deterrence. In regards to victims, the challenge in achieving a balance in the rights into consideration is their right to make their object complaint fully without intimidation. The Victims Impact Statements are supposed to achieve justice for the victim by articulating the suffering they have endured by the offenders. This was first seen in the passage of the United Nations Congress, Prevention of Crime and Treatment of Offenders in Milan. “Allowing the views and concerns of the victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant criminal justice system. (AIC, pg. 3) In the case of abhorrent crimes such as rape or murder, families and other victims should feel protected and have the freedom to make complaints to the police without the fear of retaliation or intimidation by the alleged offender. In the case of sentencing, “victim input into sentencing decisions is most in keeping with the objective of restitution, which places the victim and what the victim has suffered at the centre of the sentencing process” (NZ Justice, 9. 1). The participation of victims are presumed to be in the form of retaliation or compensation for the victims and the families.

In the reform for the victims means that victims have the right to be treated, respectfully, fairly, and a paid restitution or compensation for the damages occurred by the offender. (Groenhuijsen, pg. 1) One of the biggest challenges is the time delays in sentencing which causes victims and their families involved in the case to endure years of uncertainty, and wait to see the course of action taken against the offender. This is evident in the R V. Wood (1995), Caroline Byrne was murdered by Gordon, but he wasn't convicted until 13 years later in 2008 and only sentenced to 17 years in prison. In this case justice was ineffective for the families of the victim. Another case R v. Kinloch (2004) NSWSC 998, the victim June Booth was murdered in 2003 by mentally ill under the Mental Health Act (1990), Gregory Kinloch. He was found not guilty by reason of mental illness, the victims didn't get any justice, there were no penalties imposed, and to the extent of society and the victim, the offender suffered from mental illness where he could not judge the moral implications of right or wrong. The criminal justice system has progressively been in favor of victim rights but not all together against the rights of the offenders.

In the case of the offenders, they are presumably innocent until proven guilty, with the right to a fair trial. In the court systems the purpose of cross examining is for the complainant and the alleged offender. For the offender it is primarily the only part of the defense that ensures a fair trial where the evidence can be tested against them. R v. Fernando (1992) set the precedence for the sentencing of Aboriginal offenders. Establishing the Fernando principles that took into account the socio-economic circumstances in regards to the offender. The alternative implemented by the Criminal

Procedure Amendment Regulation (2005) used Circle Sentencing that involves the entire Aboriginal community, which not only provides support for the victim, but the sentencing process, and reduces recidivism within the Aboriginal communities. (NSW, 2005) In case law there are several inequalities of rights and dramatic imbalances between the rights of the victims and the offenders. These discrepancies include; legal aid and advice, the requirement in giving evidence in the court for the victims against the right to the offender, mitigation where the accused can say whatever they wish to get a leaner sentence, and the right to appeal against the sentence a reward not given to the victim. (Groenhuijen, pg. 3) The Crimes Case Conferencing Trial Act 2008 (NSW) is purposed with regulation the discounts given with plea bargaining at tactic given to help victims a greater say. This can be treated as both ineffective and effective for the offender and the victim. Criminal cases can determine sentencing and punishment and must balance the rights of the victim, offender, and the society.

The role of society is generally the government and the surrounding community that surround the justice system. In the case of R v. AEM, R v. KEM, and R v. MM (2002) (NSWCCA), the teenagers were handed light sentences for the gang rape that left the community outrages, this led to the Crimes Amendment (Aggravated Sexual Assault in Company) Act 2001 (NSW), so that judges could impose longer sentences for the accused. The role of society reflects the views of the public, and the main concern during cases are to ensure the trials are fair in the case of, where if the accused is found guilty than they should get just punishment. The sentencing and punishment is supposed to act as a deterrent for people who are likely to

offend. The use of rehabilitation as a form of encouragement is purpose for immediate action of serving the sentient. Society's role is seeing that legislation is made in order to deter crimes and offenders from committing crimes gains, and if in the event they do repeat, penalties are guaranteed. In the case of R v Scott [2005] NSWCCA 152, the common law principle of proportionality was recognize to ensure that the offenders are adequately punished for the offence. (NSW, 2-230) Society's want for the victims is to not be emotionally or psychologically damaged by the pressure or ordeals of the criminal cases that they are involved in.

In a criminal case the resolution is to determine if the alleged offender is guilty of the charged crime. NSW criminal cases go first before the local court, where juries are not used. The penalties that are imposed during the sentencing process are in a way not considered effective or ineffective in achieving justice for the society, offenders, or the victim. The main purpose of Crimes (Sentencing and Procedure) Act 1999 (NSW) is to provide the statutory guidelines in regards to the sentencing process. Within its blueprint is the punishment purposes, the penalty types, limitation to the penalties, and the imprisonment as the last resort. The legislation outlines that various factors that goes into sentencing that is a delicate balance of offender and victims' rights. The effectiveness of the imposed penalties during the sentencing is supposed to achieve justice for the society, offenders, and the victims. In some cases the results are not feasible, where the case of socio-economic factors, balance of rights, fair trial, time delays, and the uncontrollable factors such as mental illness can deter the effectiveness or ineffectiveness of justice for all parties involved.

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