



High Court examines the role of 'background' in sentencing

Stewart, John.
Lateline – ABC-TV
5th August 2013

EMMA ALBERICI, PRESENTER: For the first time in 30 years the High Court will consider the relevance of an Aboriginal person's background in the sentencing of Indigenous offenders.

Tomorrow the High Court will consider the case of William Bugmy, an Aboriginal man from the New South Wales country town of Wilcannia.

William Bugmy was first jailed at the age of 12 and has spent most of his adult life in prison.

His case could change the way Aboriginal people are assessed and sentenced right across the country.

John Stewart reports.

JOHN STEWART, REPORTER: This is William Bugmy as a young boy in the small country town of Wilcannia. Less than 10 years after this photo was taken, he was sent to prison, and later, foster care.

JULIE BUGMY, AUNT: William's been - been locked up since he's been 13, been in and out. Well who then paid the parent role for this juvenile? The state? Who was a parent to this child?

JOHN STEWART: This photograph shows William Bugmy with a group of primary school-aged friends at Wilcannia in the 1980's. Only one of these eight boys did not end up prison.

JULIE BUGMY: Benji's in jail. Steven I think in rehabilitation. Phillip's in, Damien in, William in and Michael in.

JOHN STEWART: Julie Bugmy is William's aunt. She's travelled from Broken Hill to Dubbo to meet with William's lawyers at the Aboriginal Legal Service. She wants the High Court to consider William Bugmy's experience as an Aboriginal man who has spent most of his adult life in prison.

JULIE BUGMY: Well 13 years of age, he's been in juvy; from there to jail. So from 13, someone woulda had to parent him for five years. So who then parented him?

STEPHEN LAWRENCE, LAWYER, ABORIGINAL LEGAL SERVICE: There's a lot of information in the papers in this matter about exposure at an early age to quite extreme domestic violence, early - very early problems with drugs and alcohol. I think it paints a picture of somebody who in a very real way never had a chance to rehabilitate.

JOHN STEWART: William Bugmy was sentenced to six years in jail for assaulting a prison guard with a billiard ball. The guard lost sight in one eye. The Crown didn't think the sentence was long enough and launched an appeal. The NSW Court of Appeal then increased the sentence to seven

and a half years in prison. But it's the attitude of the appeal court to William Bugmy's life as an Aboriginal man that's at the heart of this High Court case.

The court of appeal found that, "With the passage of time, the extent to which social deprivation in a person's youth and background can be taken into account must diminish. This is particularly so when the passage of time has included substantial offending."

William Bugmy's lawyers will challenge that view in the High Court and argue that an Aboriginal offender's life experience does not diminish over time and should not be worth less, no matter how many times a person reoffends.

JULIE BUGMY: They can't deny him his Aboriginality. He's Aboriginal. That's all to it. His mother is Aboriginal. His father - I'm Aboriginal.

STEPHEN LAWRENCE: What lies at the heart of our submissions on this appeal is the notion of equality before the law. Now you don't in my view achieve equality before the law through applying a one-size-fits-all approach. It's actually necessary to examine difference, to understand difference in order to achieve real equality.

JOHN STEWART: The rate at which Indigenous people are imprisoned in Australia has almost doubled since the Royal Commission into Aboriginal deaths in custody in 1991.

THALIA ANTHONY, LAW FACULTY, UTS: For Indigenous people, this is a trend across Australia, certainly moreso in some jurisdictions like Northern Territory and Western Australia, but no jurisdiction is immune from that trend. So it is a problem not only for Indigenous people, but I think for the community at large when we have a significant portion of the population in prison.

JOHN STEWART: But victims of crime groups say that Aboriginal people should not be treated any differently to the rest of the community.

KEN MARSLEW, ENOUGH IS ENOUGH: One of the concerns that I have about our legal system - don't call it a justice system - but the legal system, is that we are making excuses not only for Aboriginality, but for cultural differences and other areas when in fact we have one system that should be servicing us all. All we're doing is making excuses. Is this so defence lawyers can make more money rather than actually turn it into a justice system?

JOHN STEWART: But William Bugmy's aunt believes that Aboriginal people's lives are different and that difference should be acknowledged by the High Court.

JULIE BUGMY: I'm hopin' somethin' positive will come out of it for us. Just a bitta consideration for him. He is a human bein'. Just have a little bit of consideration for him.

JOHN STEWART: Consideration that William Bugmy's family hope will lead to fewer Aboriginal people spending their lives in jail.

John Stewart, Lateline.