

Court Justice 4: Prison is the Last Resort

Episode 4 of Court Justice, Sydney took a look at the difficult decisions magistrates have to make when sentencing offenders.

The three cases illustrated just how tough these decisions can be, when all factors are taken into account.

Before Downing Centre Local Court this week were a 20-year old French man who pleaded guilty to a 'king hit' that fractured his victim's face, an unemployed father of five in breach of a community service order, and a drug and alcohol addicted man who breached his suspended sentences.

The king hit

French national Julian Guieridos pleaded guilty to [assault occasioning actual bodily harm](#) after administering a 'king hit' to the back of his victim's head outside a Sydney casino. The victim suffered multiple fractures to the face.

The case presented a tough decision for Magistrate Greg Grogan, who was responsible for upholding the community's expectation of tough punishments for offences involving alcohol-fuelled violence.

Mr Guieridos appeared genuinely remorseful and presented evidence to prove his good character to the court. The defendant had his whole life ahead of him and the magistrate was tasked with deciding whether he should be sent to prison.

In making that determination, the magistrate had to consider a whole range of factors, including the seriousness of the offence, the need to deter others and also to deter Mr Guieridos, the defendant's prior good character, his plea of

guilty and expressions of remorse and so on.

His Honour decided that the appropriate [penalty](#) was three months in prison, which was ultimately reduced on appeal to two-year good behaviour bond.

Those who feel their penalties in the Local Court are too severe have the right to lodge a '[severity appeal](#)' to the District Court (which, incidentally, is located in the same building as the Local Court).

A District Court judge cannot impose a more severe penalty than the Local Court magistrate unless he or she issues a warning to the defendant to the effect that if he or she proceeds with the appeal, a harsher sentence may be imposed. This is known as a '[Parker warning](#)'.

For this reason, it is extremely common for those who are sent to prison by a Local Court magistrate choose to appeal their sentences to the District Court.

The revoked community service order

During the second case of the week, Deputy Chief Magistrate Chris O'Brien remarked:

"Courts take no pleasure in sending people to gaol. Gaol is a horrible place. It is the ultimate punishment, the ultimate consequence ... but sometimes there is no alternative."

Before the court was unemployed father of five, Phillip Rusianos who, 12 months prior to his current appearance, had pleaded guilty to disposing of stolen goods.

As an alternative to prison, Mr Rusianos had been ordered to undertake [community service as punishment](#), but he failed to complete it, which brought him back before the court.

Rusianos' criminal defence lawyer asked the magistrate to consider a range of factors, including a relationship

breakdown and other life struggles.

However, His Honour was unimpressed by the defendant's failure to comply with the community service order and sentenced him to four months in prison.

That penalty was ultimately quashed on appeal and replaced by a six month 'suspended sentence' – meaning the defendant avoided going to prison despite the breach.

The blackout

Magistrate Jane Mottley looked pained as she read through defendant James Stewart's lengthy criminal history, who was before the court for urinating on a train, resisting an officer and offensive language.

Mr Stewart did not actually remember the day in question. He remembered collecting his niece and nephew from Sydney airport, but consumed so much alcohol that he could not recall what else happened on their journey home, except that he woke up in Surry Hills Police station facing criminal charges.

Mr Stewart said his problems with drugs and alcohol started when he was just 12 years old. He acknowledged it was the primary reason behind his brushes with the law.

But as Her Honour waded through the defendant's detailed history, it became evident he had already been given multiple good behaviour bonds across a range of offences including: resisting officers, assault occasionally actual bodily harm and driving whilst disqualified.

Moreover, the current offences breached existing section 12 bonds, also known as a suspended sentence.

"The facts of the resist officer in execution of duty don't portray that as being the most grave example of an offence of resisting an officer – but it's resisting officers in execution of duty nonetheless, and it places him in breach of

those section 12 good behaviour bonds” the magistrate remarked.

“I can’t take no action. That would be, that would be manifestly inadequate. Yet another suspended sentence is just not an option”.

Her Honour then took an adjournment to consider the matter further, before noting that Mr Stewart had spent several months in custody as a result of the present offences and had undertaken court-ordered rehabilitation, achieving “remarkable” results.

She ultimately decided not to send him to prison.