

BOOK REVIEW**SENTENCING LAW AND PRACTICE**

BY GEOFF HALL
LEXISNEXIS NEW ZEALAND, 2014

JEREMY FINN*

The third edition of *Sentencing Law and Practice* by Geoff Hall represents a portion of a larger loose-leaf and electronic work which has long been seen as a major reference work for those practising in the criminal law field. As the author's preface makes clear, that book essentially falls into two distinct parts. The first, about one-third of the total, is a discussion of the principles of sentencing, while the remainder is an annotated version of the Sentencing Act 2002. The text is stated to be intended to be used by students and teachers of sentencing, and also by lawyers and probation officers. Unfortunately a number of faults limit its value to either target audience.

The first impression is one of sheer size. This edition is well over 1,400 pages, including tables and index. This bulk must significantly limit its utility – and portability – as a practitioner work, while also reducing its appeal as a textbook. Unfortunately, in many places the bulk of the work appears to come, not from any need to explain current law coherently and fully, but from incorporation of material which should have been culled in the preparation of this work or, more importantly, have been brought fully up-to-date.

Thus, for example, in the commentary to the Sentencing Act, the author includes material on the levels of penalties imposed under a number of other statutes. Despite the publisher's cover description of the third edition as "fully updated", this material is largely outdated. The three and a half pages of notes on Fair Trading Act 1986 are dominated by cases from the 1980s and 1990s and not one case decided after 2008 is included. A few pages later the discussion of penalties under the Health and Safety in Employment Act 1992 has only three cases from after 2008. To be fair, the Resource Management Act 1991 material, while still rather dated, does contain more recent decisions.

This is far from the only point where old material is reproduced without apparent consideration of its current utility. The discussion of community service in the annotations to section 56 of the Sentencing Act is not assisted by a long discussion focusing on an unreported 1988 decision on community service under the pre-2002 legislation. Nor is there any real benefit in reproducing a list of examples of minimum periods of imprisonment for murder under the Criminal Justice Act 1985 in the commentary to s 104 Sentencing Act; where the list follows on an exhaustive recital of cases post-

* Professor of Law, Law School, University of Canterbury.

Sentencing Act, catalogued first by guiding principles and secondly by the length of the non-parole period. Antique material is also included in relation to victim impact statements prior to the Victim's Rights Act 2002, while the discussion of disputes as to the contents of a pre-sentencing report extends over two pages with only a final comment referring to possible resolution under s 24 Sentencing Act 2002.

The retention of outdated material – and the failure to update that older material – are not confined to the Sentencing Act commentary. In the discussion of sentencing principles, the discussion of tariff judgements and appellate guidance in sentencing generally is seriously out of date and a more up-to-date discussion focused on the leading cases from the last 10 years would be more helpful than the current text. True, there is a useful guide to appellate decisions on particular offending, although this retains some earlier cases which have been overtaken by later decisions. For example, it is not clear why the reference to cannabis cultivation continues to refer to *R v Dutch* [1981] NZLR 304, given that *R v Terewi* [1999] 3 NZLR 62 has been the leading decision on the field for more than a decade. There is a lengthy discussion of sentencing for manslaughter which unfortunately contains not a single case decided since 2005, and there is a similar lack of recent case law discussion in relation to the sentencing problems posed by offenders who are addicted to drugs and alcohol or gambling. Further, if a reader seeks information about the “three strikes” legislation and its effect on sentencing, he or she will be disappointed. There is no reference to the legislation in the less than informative index, and the publishers have, for reasons which are not clear but may have to do with the excessive length of the book, not provided a table of statutes. This is at best unfortunate.

Most concerning is the inadequate and inaccurate discussion of the effect of delay in bringing a case to trial where that delay infringes the offender's Bill of Rights Act 1990 rights – a mitigating factor since the amendment to s 9(1) of the Sentencing Act 2002, as the author notes. However, after very lengthy discussion of the Court of Appeal's treatment of the issues in *R v Manawatu* (2006) 23 CRNZ 833, there comes a reference to the granting of a discount in the High Court in *R v Williams* in 2007, with not a single reference to the subsequent decisions, in that case, of the Court of Appeal and Supreme Court, which have clarified the law in strong terms. A major error of this kind should not occur.

Certainly any student of sentencing principles would be disadvantaged by reliance on the insufficiently updated material in this section. A sentencing teacher might also be inclined to take issue with the statement that denunciation is an integral feature of proportionality, a statement made immediately after the more correct view that retribution-based sentencing is founded on proportionality. The implied link between proportionality and denunciation is puzzling. Just deserts sentencing is widely recognised as being focussed solely on the offender's conduct, and therefore does not feature any element of denunciation. Indeed, a just deserts sentence imposed in private

and never reported may be proportional and theoretically valid although it can have no denunciatory effect. As Duff has explained, denunciation is concerned more with communication to the community and to the offender of the wrongness of the conduct, a quite different sentencing purpose.

While this hard-copy edition will be of some utility to both practitioners and students, it cannot be recommended to either group of potential users as comprehensive, or fully-up-to-date and certainly not as being as usable as they have a right to expect. Inside this mountain of words there is probably a thinner and better book struggling to get out, but neither the author nor an editor has been prepared to make the major revisions and cuts – and the sustained updating – that would have allowed a shorter, more accurate and more focussed version to emerge.