R v Gill; ex parte Attorney-General of Queensland **[2004] QCA 139 (30 April 2004) – Queensland Court of Appeal**

'Attempted rape' – 'Following, harassing, monitoring' – 'Sentencing' – 'Sexual and reproductive abuse' – 'Stalking'

Charge/s: Aggravated stalking, attempted rape.

Appeal Type: Appeal against sentence.

Facts: The respondent pleaded guilty to aggravated stalking and attempted rape and was sentenced to two years and three years' imprisonment respectively, to be served concurrently. There was no domestic violence order in place at the time of the offence. The Court recommended consideration of post-prison community based release after 12 months (See further at [2]-[3]).

Issue/s: Whether the sentence was manifestly inadequate.

Decision and Reasoning: The appeal was dismissed by majority. Holmes J (with whom Davies JA agreed) discussed *R v Stephens* [1994] QCA 507 and noted that it is not correct to approach rapes occurring in an existing relationship more leniently. However, this is not to say that that in the circumstances of a particular case, a sexual assault committed by a current or former partner will necessarily be equivalent to a sexual assault committed by a stranger. In comparing this case to *R v McNamara,* her Honour stated at [16], '*I do not think that the traumatic effect of sexual assault in a case such as this, where the complainant had, albeit without enthusiasm, admitted the respondent to the house and gone to sleep with him present, is readily equated with the likely shock and fear of a woman sleeping in her home who without warning is assaulted by an intruder; as happened in McNamara.'* As such, also taking into account the respondent's plea of guilty and comparable cases, her Honour held that the sentence, while 'lenient' ([21]), was adequate. However, de Jersey CJ dissented. His Honour also discussed *Stephens.* His view was that the statement in *Stephens* about an 'honest but unreasonable' mistake as to consent in the relationship context as a mitigating factor did not apply. The complainant had made her lack of consent clearly known and had previously shown reluctance to let the respondent into the house. His Honour stated, 'This is a case where the circumstance of the prior relationship should in no degree have led to more lenient treatment than would otherwise be accorded' (See at [5]). His Honour then went onto consider the respondent's serious and relevant criminal history, including stalking offences as well as breaches of domestic violence orders (on four occasions over an eight year period with other partners). As such, having regard to this context, his view was that the sentence for attempted rape should be increased to four and a half years and that the order for community release should be removed. Nevertheless, he was in dissent and the appeal was dismissed.