***R v HBL* [2014] QCA 270 (24 October 2014) – Queensland Court of Appeal**

'Abduction' – 'Breach of domestic violence order' – 'Deterrence' – 'Domestic violence order' – 'Family law orders' – 'Mitigating factors' – 'Sentencing'

Charge/s: Abduction, breach of domestic violence order.

Appeal Type: Application for leave to appeal against sentence.

Facts: The applicant was in a long-term, intermittent relationship and had one child. His partner sought and obtained a domestic violence order (DVO) in 2011. In 2012, an order in the Federal Magistrates' Court was made that the child was to live with the mother. Limited contact was allowed with the mother's consent. The mother left the child at a friend's house, whereupon the applicant arrived unannounced and took the child, drove away, and held the child for a period of time, in breach of the DVO. He made repeated calls stating he would not return the child if the child was to be handed back to the mother or her friend. The applicant had a long criminal history of over fourteen court appearances, including a previous breach of a child protection order (albeit towards the lower end of seriousness). The applicant pleaded guilty to the abduction and breach offences and was sentenced in the District Court to 4 years' imprisonment for abduction. He was convicted but not further punished for the breach. The primary judge implicitly accepted the Crown's submission that this conduct was in the worst category of offending.

Issue/s: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was allowed. While the applicant had a long criminal history, Fraser JA (with whom Mullins J and Gotterson JA agreed), compared analogous decisions and highlighted factors which made them distinguishable. His Honour noted that the child was not unrelated or unknown, there was no sexual motivation and the taking was non-violent. As such, the Court held that this was not within the worst category of offending. Notwithstanding, the Court noted that such conduct (including the fact that the appellant was motivated to be with his son and breaching court orders) cannot be condoned and deterrence is important. As such, a custodial sentence was imposed but was reduced to 18 months' imprisonment with immediate parole eligibility.