

***R v Amery* [2011] QCA 383 (23 December 2011) – Queensland Court of Appeal**

‘Malicious act with intent’ – ‘Non-parole period’ – ‘Physical violence and harm’ – ‘Pre-sentence custody’ – ‘Sentencing’

Charge/s: Malicious act with intent.

Appeal Type: Appeal against sentence.

Facts: In breach of a domestic violence order made that morning, the appellant returned to his de facto partner’s house and hit her head twice with a sledgehammer while she was sleeping, causing substantial injuries. The applicant pleaded guilty to a malicious act with intent and was sentenced to 8 years’ imprisonment, with no parole eligibility date set. No adjustment of the sentence was made for time already served in pre-sentence custody.

Issue: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was upheld. The Court noted that the head sentence was not outside the permissible range. The offending was very serious, was not a spontaneous response, and was committed in breach of the DVO. Also, he had a serious criminal history, including a similar breach of a domestic violence order. However, the trial judge erred in not adjusting the sentence for pre-sentence custody and not imposing a parole eligibility date. As such, also taking into account the (albeit late) plea of guilty, the sentence was reduced to seven years, seven months’ imprisonment, with the appellant becoming eligible for parole after three years.