***JMM v Commissioner of Police* [2018] QDC 130 (6 July 2018) – Queensland District Court**

'Appeal against sentence' – 'Breach domestic violence order' – 'Breach of procedural fairness' – 'Emotional and psychological abuse' – 'Manifestly excessive sentence'

Appeal type: appeal against sentence.

Facts: On 4 August 2016, a protection order was made under the *Domestic and Family Violence Protection Act* 2012 (Qld) (DFVPA) against the appellant for the benefit of the aggrieved, her de facto partner, and her three children. The order only contained the standard conditions pursuant to 56 of DFVPA including a condition that the appellant must be of good behaviour towards the child, must not commit associated domestic violence against the child and must not expose the child to domestic violence. On 8 November 2018, one of the appellant's children verbally provoked the intoxicated appellant and pointed a knife at her. The aggrieved disarmed the child, kicked him in the bottom and chased him across the street. Two witnesses recount the aggrieved and appellant hurling verbal abuse at the child. The appellant's conduct fell within the definition of "domestic violence" under s 8 of the DFVPA since it could be classified as "emotionally or psychologically abusive" (see [45]). Accordingly, the appellant was later charged and convicted of contravention of the protection order in the Magistrate's court. She was sentenced to 3 months imprisonment. The appellant appealed against this sentence.

Issues: the grounds of the appeal were two-fold: sentence was manifestly excessive and there was a breach of procedural fairness in the magistrate not inviting submissions on imprisonment.

Decision and reasoning: appeal allowed and the sentence was therefore set aside.

The second ground of appeal was allowed. His Honour stated that the magistrate erred in denying the appellant's solicitor the opportunity to address her on the appropriateness of the sentence of imprisonment. Denying this opportunity and imposing the sentence nonetheless constituted a breach of the rule of natural justice (see [50]). This error, amongst other errors in the Magistrate's exercise of the sentencing discretion, lead his Honour to set aside the sentence. Accordingly, it was necessary for the appellate court to exercise the sentencing discretion afresh, unless doing so lead to the conclusion that no different sentence should be passed (see [14]).

On the basis of the Court's independent exercise of discretion and analysis of relevant cases, the sentence imposed was considered excessive. The respondent relied upon *PFM v Queensland Police Service* [2017] QDC 210 and *TZL v Commissioner of Police* [2015] QDC 171 in their submission that the sentence was appropriate since the offending in question was more serious than in each of those cases that yielded similar sentences (see [53]). In response, his Honour stated that the offending was not objectively more serious than in *PFM* and *TZL* and is not truly comparable and therefore of little assistance (see [54]-[58]). At the discretion of his Honour, two recent analogous cases were then considered. Taking into account those decisions and the material facts of the case, namely that the contravention involved no violence and was limited to a single instance of provoked verbal abuse, his Honour concluded that the sentence was outside the permissible sentencing range for the offender (see [64]-[65]) and ordered a sentence of probation for six months.