

LDS v QRR [2017] QDC 199 (15 June 2017) – Queensland District Court

‘Cumulative sentence’ – ‘Manifestly excessive’ – ‘Natural justice’ – ‘Psychologist’ – ‘Sentencing’ – ‘Statistics’ – ‘Wilful damage’

Charges: Contravening domestic violence order x 3; wilful damage x 1; common assault x 1.

Appeal type: Appeal against sentence.

Facts: The complainant was the aggrieved in a domestic violence order taken out against the defendant. The breaches of domestic violence order and common assault charge occurred when the appellant punched and pushed the complainant to the ground on three occasions ([6]). The wilful damage charge occurred when the appellant stomped on her mobile phone while she was trying to contact the police ([7]). Following a plea of guilty, the Magistrate imposed cumulative sentences totalling 18 months’ imprisonment, with a parole release date after 6 months ([3]).

Issues: There were three grounds of appeal: first, that the Magistrate placed disproportionate weight on general community deterrence; second, that the Magistrate disregarded the appellant’s mental health issues; third, that the Magistrate erred in ordering the sentences to run cumulatively without consulting either party.

Decision and Reasoning: The appeal was allowed.

In relation to the first ground, the Magistrate described the appellant’s offending as a ‘reign of terror heaped upon the complainant’ ([16]). District Court Judge Muir described this statement as an exaggeration because the violence was at the lower end of the scale and the offences were committed within a short time period ([31]). The Magistrate also referred to statistics that 700 women would be killed in the next 10 years if nothing was done about domestic violence ([19]). District Judge Muir held that using statistics in this way indicated that the Magistrate did not place sufficient weight on the appellant’s mitigating factors.

On the second ground, the appellant asserted that he suffered from depression, post-traumatic stress disorder and schizophrenia. However, the psychologist’s letter tendered in evidence did not mention those conditions. The Magistrate enquired as to who gave the diagnoses, but more information could not be tendered ([27]). District Judge Muir held that the Magistrate was entitled to place little weight on the diagnoses.

On the third ground, Muir DCJ held that it was an error for the Magistrate to not invite submissions about the possibility of cumulative sentences ([36]).

On the whole, Muir DCJ concluded that the sentence was outside the appropriate range ([47]). The appellant was re-sentenced to an overall head sentence of 9 months' imprisonment, with the appellant to be released immediately on parole after having served approximately 4 months in prison ([50]).