

***NVZ v Queensland Police Service* [2018] QDC 216 (12 November 2018) – Queensland District Court**

‘Breach of domestic violence order while in custody’ – ‘Factors affecting risk’ – ‘People with mental illness’ – ‘Sentencing’ – ‘Threat to kill’

Charges: Contravening a domestic violence order x 1.

Appeal type: Appeal against sentence.

Facts: During proceedings before the Magistrates Court in which a temporary protection order was made, the appellant threatened to kill the aggrieved and her children. The appellant pleaded guilty to one charge of contravening a domestic violence order. He was sentenced to nine months’ imprisonment with an immediate parole eligibility date and 36 days of pre-sentence custody declared as time served. The appellant appealed against the sentence on the basis that it was manifestly excessive.

Issues: The appellant submitted that the sentence was excessive having regard to his psychiatric condition, the principles of totality and the comparable case tendered by defence which, in combination with his personal circumstances, supported a shorter head sentence.

Decision and reasoning: The appellant relied on *R v Goodger* [2009] QCA 377 as justification for a reduction in sentence because of his reduced moral culpability. However, that case was not authority for the proposition that the sentence must be reduced by reason of a psychiatric condition [50]. Kefford DCJ held that there was no compelling evidence that the appellant’s condition at the date of sentencing meant that continued incarceration would have more of an impact on the offender than it would on a person of normal health. There was nothing to suggest that there was a serious risk that imprisonment would have adverse effects on the appellant’s mental health. Accordingly, the sentence imposed was not excessive in the circumstances, even though the offending occurred at a time when the appellant could not act on the threats made (as he was in custody) ([71]).

The appellant's criminal history illustrated his general disregard for the law and court orders. An aggravating circumstance was the fact that he offended whilst in the confines of a court room, demonstrating disrespect not only for the complainant but also the Court ([72]). The sentencing principle of protection to the Queensland community from the offender was significant, given the appellant's vulgar and bold threats to the aggrieved in the presence of the Court. No submissions were made that indicated that the appellant had taken steps towards rehabilitation. The Court made reference to *Singh v Queensland Police Service* [2013] QDC 037, but did not regard that the decision was evidence that the sentence in the present case was excessive. That case was distinguishable because there were no prior convictions for violence or contraventions of a domestic violence order. It also did not involve the aggravating feature of a threat to kill delivered to the aggrieved and her children in the presence of the court.