

Commissioner of Police v DGM [2016] QDC 022 (15/3279) Kingham DCJ 22 February 2016 – Queensland District Court

‘Aboriginal and Torres Strait Islander people’ – ‘Aggravating factor’ – ‘Assault occasioning bodily harm’ – ‘Breach of temporary protection order’ – ‘Mitigating factors’ – ‘Physical violence and harm’ – ‘Rehabilitation’ – ‘Sentencing’ – ‘Temporary protection order’ – ‘Verbal abuse’ – ‘Victim’

Charges: Assault occasioning bodily harm, breach of temporary protection order (TPO) (4 counts), breach of bail (7 counts).

Appeal Type: Appeal against sentence.

Facts: Two weeks before the offending, a TPO was served on the respondent (an Aboriginal man) which named the complainant (his partner), their young son and their unborn child as protected persons. The order prohibited him from being in the vicinity of the complainant apart from authorised contact with their child with the complainant’s consent and required that he be of good behaviour towards the protected persons. The offending occurred when the respondent went to the complainant’s house to visit his son without authorisation. He approached the complainant with a metal pole and verbally abused her. He dropped the pole and walked towards the complainant with a clenched fist. He then punched, struck and kicked her which caused her to fall to the ground. She was taken to hospital and released that night. After fleeing, the respondent returned later that night, came into her yard and asked to talk to her. Police found him sitting in a car with a machete at his feet. His criminal history included property, street and driving offences, as well as a history of breaching community based orders. He had a serious drug addiction. He pleaded guilty early and was sentenced to 12 months’ imprisonment for assault occasioning bodily harm. Concurrent lesser terms for the other offences were imposed. The offending also wholly activated an existing suspended sentence. He was released on parole immediately.

Issue/s: Whether the sentence was manifestly inadequate.

Decision and Reasoning: The appeal was upheld. Her Honour held that the Magistrate erred in taking considering the respondent's eventual surrender to police as a mitigating factor. While the surrender was voluntary, it had to be considered in the context of numerous bail breaches leading up to sentence, which was consistent with his history of disregard for court orders. In relation to the complainant's apparent wish to continue the relationship with the respondent, her Honour noted at [34]-[35] that – *'Courts in Queensland and in other states of Australia, have recognised the need to approach submissions about reconciliation with real caution, because of the particular features of domestic and family violence. The fact that a victim is a reluctant complainant is not a mitigating factor. Likewise, reconciliation after the victim has complained ought not mitigate the sentence. There may be cases in which reconciliation is relevant to an offender's prospects of rehabilitation. However, that comes from the offender's conduct, not the victim's forgiveness. The nature of the relationship means victims may, contrary to their own welfare, forgive their attacker. That does not reduce the risk posed by the offender and, depending on the dynamics in a particular relationship, it could well exacerbate the risk. Necessarily, prospects of rehabilitation must be assessed by reference to the offender's attitude and conduct, not the victim's.'*

In this case, the Magistrate correctly did not treat the complainant's support as a mitigating factor. However, the Magistrate did err by immediately releasing the respondent to encourage his rehabilitation.

Rehabilitation is an important consideration for young indigenous people with drug addictions. However, given the seriousness of the offence and the vulnerability of the victim, the need for denunciation and deterrence outweighed the need for rehabilitation. In citing comparable authorities, (see from [45]-[62]), her Honour then concluded that the sentence was manifestly inadequate. The respondent was re-sentenced for assault occasioning bodily harm to 18 months' imprisonment, with parole release set at the one third mark in the sentence. A conviction for a domestic violence offence was recorded.