

***EAV v Commissioner of Police* [2016] QDC 237 (16 September 2016) – Queensland District Court**

‘Alternatives to imprisonment’ – ‘Community based orders’ – ‘Contravention of a domestic violence order’ – ‘Cross-application for mutual protection orders’ – ‘Magistrates’ – ‘People with mental illness’ – ‘Perpetrator interventions’ – ‘Physical violence and harm’ – ‘Previous breaches of domestic violence protection order’ – ‘Protection orders’ – ‘Sentencing’

Charge/s: Breach of a domestic and family violence order.

Appeal Type: Appeal against sentence.

Facts: The male appellant and the female complainant were in a relationship. They were subject to a domestic violence protection order on 8 July 2015 for a period of two years. These were cross-orders. In October 2015, the appellant breached these orders and was fined \$500. On 20 November 2015, police attended their address after reports of a dispute. The appellant told police that he and the complainant were in a heated argument, which the complainant had initiated. The appellant said he bumped into the complainant, causing her to stumble. The complainant slapped the appellant. He then grabbed the complainant, threw her on the bed, and restrained her with his body weight. He released her and the argument continued until police arrived.

In sentencing, the magistrate expressed significant concern about the chronology of events namely, that the domestic violence order had been made in July 2015, breached by the appellant on 27 October 2015, the appellant was sentenced for that breach on 11 November 2015, and he then breached the domestic violence order again on 20 November 2015. The appellant was sentenced to three months’ imprisonment, wholly suspended, with an operational period of 12 months.

Issue/s: The sentence was manifestly excessive.

Decision and Reasoning: The appeal was allowed. Dearden DCJ noted that the magistrate failed to give appropriate recognition to a number of relevant factors, namely at [22]:

- > ‘there were mutual, cross-orders for domestic violence in place at the time of the offending;
- > ‘the initial violence in the incident was, in fact, the complainant slapping the appellant;
- > ‘the appellant’s violence, in response, was relatively low level (although nonetheless unacceptable);
- > ‘the appellant had been in receipt of medical care in respect of a significant mental health issue, and importantly, had undertaken the Anglicare Living Without Violence Program, which was a substantial program, indicating on his part a significant willingness to change;

> 'the appellant had expressed his remorse to police immediately after the event'.

His Honour noted that 'magistrates dealing with breaches of domestic violence are, of course, under significant time pressures and the learned magistrates sentencing remarks are brief'. However, His Honour held that, 'the transcript does not indicate that the learned magistrate in any way considered alternatives other than imprisonment in respect of this matter, and appears only to have taken into account the chronology (which is obviously significant) and to some very minor extent (referenced at the conclusion of her sentencing remarks) the steps that the appellant had taken in respect of receiving assistance from Dr Calder-Potts and Anglicare' (see [24]).

The appellant was resentenced to 18 months' probation with a special condition that he continue treatment and complete 100 hours of community service. No conviction was recorded.