

***CTC v Commissioner of Police* [2019] QDC 250 (29 November 2019) – Queensland District Court**

‘Domestic violence order’ – ‘Following, harassing and monitoring’ – ‘Manifestly excessive’ – ‘Mitigating factors’ – ‘Physical harm and violence’ – ‘Pregnant people’ – ‘Separation’ – ‘Sexual and reproductive abuse’

Charges: Contravention of a domestic violence order

Case type: Appeal against sentence

Facts: The complainant and applicant were married but did not live together. The complainant was pregnant with their second child at the time of offending and there was a domestic violence order in place preventing the applicant from engaging with the complainant in any way without her consent. On the day of the offending, the applicant had become enraged and assaulted the complainant after finding communications between her and another male on her phone. The attack left the complainant with a swollen and cut lip.

The applicant pleaded guilty to the charge and was originally sentenced to three months imprisonment wholly suspended for two years with the conviction recorded.

- > The sentence was manifestly excessive;
- > The learned magistrate erred in failing to have proper regard to the principles of ‘parsimony’; and
- > The learned magistrate failed to give due weight to the appellant’s mitigating circumstances.

Issues: Whether the sentence was manifestly excessive and whether the magistrate erred in his reasoning.

Decision and reasoning: Jarro DCJ concluded that the sentence imposed was not excessive.

Ground 1: ‘The applicant came before the court with a relevant criminal history. He is a mature man. He used actual violence and a physical injury was sustained by the complainant, albeit of a limited nature. The offending was aggravated as the complainant was 23 weeks pregnant at the time and the violence was unprovoked’ (pg 5). In considering these aggravating features and the need for general deterrence to be reflected in the sentence given the prevalence of domestic violence in the community, Jarro DCJ considered the sentence imposed to be within the appropriate range.

Ground 2: Jarro DCJ provided that ‘the principle of “parsimony” is not a governing principle used in the exercise of discretion in sentencing and therefore the sentencing judge was not in error by not having regard to the principle.

Ground 3: Jarro DCJ found that the magistrate appropriately balanced the applicant's mitigating circumstances against the applicant's aggravating factors and the need for deterrence.