

***JWD v The Commissioner of Police* [2019] QDC 29 (8 March 2019) – Queensland District Court**

‘Bail’ – ‘Breach protection order’ – ‘Double jeopardy’ – ‘Double punishment’ – ‘Physical violence and harm’ – ‘Protection order’ – ‘Sentencing’ – ‘Sentencing considerations’ – ‘Technology facilitated abuse’

Charges: Four charges including stalking and using a listening device in breach of a domestic violence protection order, and breach of a bail condition.

Case type: Appeal against conviction. Application for extension of time.

Facts: The applicant and complainant had previously been in a relationship. The first charge related to the use of a listening device to record a private conversation, which the applicant installed in the complainant’s vehicle during the course of their relationship. The final three charges occurred when the relationship had apparently ended. As the complainant prepared to go to sleep one night, she noticed the applicant standing on her patio, peering through a bedroom window. The behaviour was in breach of a domestic violence protection order and constituted stalking. Further, it was aggravated by being in breach of court orders ([9]-[12]).

The Magistrate took into account the fact that the applicant was 47 years old, had no relevant criminal history and was a New Zealand native. He obtained a tertiary qualification and stable employment. He also had a number of positive references attesting to his good character and sought counselling while in custody. Her Honour placed the applicant on three years’ probation. No conviction was recorded, except for the offence of unlawful stalking, as it was the most serious charge ([14]-[16]).

The applicant sought an extension of time within which to appeal, arguing that the delay was attributable to administrative error and was relatively short ([5]). It was argued that the three concurrent probation orders in relation to the stalking, contravention of the domestic violence order and breach of bail, amounted to double punishment contrary to s 16 of the *Criminal Code (Qld)*.

Issues: Whether the sentence was manifestly excessive and offended the prohibition on double punishment for the same act.

Decision and reasoning: The Court allowed the appeal and granted the extension of time. The Court held that the Magistrate's conclusion as to recording of a conviction was free from appealable error. The probation orders for the contravention of a domestic violence order and breach of bail condition were set aside as double punishment. The applicant was convicted and not further punished. Moreover, the sentencing discretion was found to have miscarried in relation to the offence of using a listening device – an offence with a maximum penalty of only two years' imprisonment and which was relatively minor in the circumstances. The sentence imposed for that offence was reduced from three years' probation to two years' probation, with no conviction recorded ([22]-[25]).