

***CBC v Queensland Police Service* [2019] QDC 3 (30 January 2019) – Queensland District Court**

‘Aboriginal and Torres Strait Islander people’ – ‘Appeal against sentence’ – ‘Female perpetrator’ – ‘History of domestic violence’ – ‘Parole eligibility date’ – ‘Parole release date’ – ‘People affected by substance misuse’ – ‘Physical violence and harm’ – ‘Victim as (alleged) perpetrator’

Charges: 1 x grievous bodily harm, 1 x assault occasioning bodily harm, 1 x contravention of a Domestic Violence Order (DVO), and a further contravention of a DVO (aggravated)

Case type: Appeal against sentence

Facts: In 2016, the appellant, an Aboriginal woman, was convicted on her guilty plea to domestic violence related offences, namely, grievous bodily harm, assault occasioning bodily harm, contravention of a DVO and a further contravention of a DVO (aggravated offence). When the appellant was released from parole, she formed an intimate relationship with the aggrieved. Their relationship was characterised by alcohol-fuelled domestic violence, which led to its termination ([5]-[7]).

A protection order was issued in 2018, prohibiting the appellant from "following or approaching the aggrieved". The appellant breached this order by attending the aggrieved's home while he was inside ([9]). The Magistrate sentenced the appellant to 1 month imprisonment to be served cumulatively upon a pre-existing 3 year sentence, with immediate release on parole. The prosecution applied to reopen the sentence on the basis that a parole eligibility date was required by s 160C Penalty and Sentences Act 1992 (Qld). The sentence was reopened in the appellant's absence and without hearing further substantive submissions about the offending conduct and mitigating circumstances. The Magistrate amended the sentence by fixing a parole eligibility date in lieu of a parole release date ([12]). The appellant was arrested and returned to custody ([13]).

Issue: The appellant appealed the sentence on the grounds of manifest excessiveness. Other grounds were raised in her submissions, such as breach of natural justice and jurisdiction to reopen the sentence ([14]-[15]).

Held:

In Morzone DCJ's view, the Magistrate 'erred in exercising the sentencing discretion by initially mistaking the facts, then allowing erroneous or irrelevant matters to guide or affect him in re-opening the sentence without regard to matters of totality, and failing to take into account some material considerations as to the nature and extent of the offending'. The sentence was therefore unreasonable and plainly unjust ([37]). While the appellant had previous convictions for serious violent offences, and had reoffended while on parole for those offences, her offending was comparatively trivial and did not involve actual contact with, or any violence towards, the aggrieved ([42]). However, she has found herself in prison as a result of her ongoing alcohol mismanagement. The current offending was at the lowest end of the range, and imprisonment was found to be disproportionate to the seriousness of the offending and 'too crushing' on the appellant ([44]). Consequently, the appeal was allowed and the Magistrate's orders were set aside. The appellant was convicted, but not further punished for the offence ([45]).