

***MEG v Commissioner of Police* [2017] QDC 302 (10 November 2017) – Queensland District Court**

‘Appeal against sentence’ – ‘Breach domestic violence order’ – ‘Probation’ – ‘Procedural fairness’ – ‘Sentencing’ – ‘Sentencing submissions’

Charges: Contravention of a domestic violence order as an aggravated offence x 1; Assault or obstruction of a police officer as a domestic violence offence x 1; Possession of dangerous drugs x 1; Contravene direction x 1; Contravention of a domestic violence order simpliciter x 1; Authority for controlled drugs x 1; Failure to properly dispose of a syringe or needle x 1.

Appeal type: Appeal against sentence.

Facts: The appellant breached a domestic violence order naming the appellant’s mother as the aggrieved and her son as a named person in the order. The breach occurred when the appellant made threats to kill herself and her son, in the presence of her son ([17]).

The appellant pleaded guilty and was sentenced to six months’ imprisonment for the contravention of a domestic violence order as an aggravated offence and four months’ imprisonment for the contravention of a domestic violence order simpliciter. For the other charges, the appellant was convicted and not further punished ([2]).

At sentence, the Magistrate indicated that he was considering a prison probation order of 2 months’ imprisonment and 12 months’ probation ([5]). After hearing submissions on that sentence, the Magistrate asked the appellant whether she consented to the probation order. MEG asked, ‘what happens if I say no?’ The Magistrate interpreted this question to mean that MEG did not consent to the order, and immediately imposed the four- and six-month sentences of imprisonment ([29]).

Issues: Whether the appellant was denied procedural fairness, and whether the sentences were manifestly excessive.

Decision and Reasoning: The appeal was allowed, and the appellant was re-sentenced to two months’ imprisonment, which was time already served.

Judge Horneman-Wren SC held that the Magistrate erred in construing MEG’s question (‘what happens if I say no?’) as a refusal to consent. Further, the Magistrate erred in sentencing the appellant to a head sentence of six months without inviting further submissions on the sentence ([32]). The Magistrate did not give reasons for why six months was an appropriate head sentence, and did not refer to any comparable cases ([33]).