

EPN v Queensland Police Service [2020] QDC 34 (4 March 2020) – Queensland District Court

‘Appeal against sentence’ – ‘Contravening domestic violence order’ – ‘Female offender’ – ‘People affected by substance misuse’ – ‘People from culturally and linguistically diverse backgrounds’ – ‘People with poor literacy skills’ – ‘Plea of guilty’ – ‘Property damage’ – ‘Separation’

Charges: Contravening domestic violence order x 1; dangerously operating a motor vehicle x 1

Case type: Appeal against sentence

Facts: The appellant wife offended by contravening a domestic violence order and dangerously operating a motor vehicle, whilst being adversely affected by an intoxicating substance. Both offences arose out of the same incident at the residence of the complainant, the appellant’s estranged husband. The appellant migrated from Thailand and could not read or write in English. On the date of the incident, the appellant attended the complainant’s residence in contravention of the protection order and caused extensive damage to the property by driving her car into the front wall of the house. The appellant pleaded guilty and was ultimately sentenced to 18 months’ imprisonment and 18 months driving disqualification.

Issue: The appellant appealed the sentence on the grounds that it was manifestly excessive because:

- The learned Magistrate mischaracterised the nature and extent of the offending conduct;
- The learned Magistrate misdirected himself by considering that appellant offending fell within in the same broad category of the comparative cases; and
- Taking into account the period of pre-sentence custody, the period of time to be served in actual custody was excessive.

Held: Morzone QC DCJ found that the learned Magistrate mischaracterised the offending as falling in the most serious of categories. Although the appellant used the vehicle as a weapon, it did not fall within ‘the most serious of categories where an offender weaponises a vehicle in a direct personal attack with potential serious injury of an unprotected victim’. The offending occurred in the context of a volatile marriage breakdown, where she moved out of the matrimonial home and went on ‘a rage of wilful destruction of matrimonial assets whilst intoxicated’. The appellant willingly caused extensive damage, with the potential of indirectly causing injury to the complainant. Morzone QC DCJ held that the offending was aggravated by her intoxicated state, domestic violence and contravention of the protection order ([33]).

Further, the learned Magistrate referred to 5 cases in his decision as to the appropriate penalty. Morzone QC DCJ considered each case in light of the appellant's offending ([40]-[50]). The cited cases were distinguishable from the appellant's offending as they involved the serious feature of a direct personal attack with a vehicle being used as a weapon on an unprotected victim. As the applicant's offending did not fall within the same serious category, such cases could not provide any comparative guidance ([50]).

Morzone QC DCJ also held that the learned Magistrate erred by failing to take into account some material considerations and the suitability of a suspended sentence ([64]). His Honour considered the nature and extent of the offending and mitigating factors, such as lack of criminal history, good character, guilty plea, demonstrated remorse, and cooperation with police. Whilst the appellant clearly 'deserved' a prison sentence, which would further the sentencing principles of punishment, and personal and general deterrence, the learned Magistrate ought to have considered the possibility of a suspended sentence. The appellant's conduct was contextual and situational, she did not require close supervision upon release into the community, and she actively took steps to self-rehabilitate and refrain from alcohol ([63], [71]).

Consequently, Morzone QC DCJ allowed the appeal and varied the sentence by making the prison term partly suspended after the appellant serves 60 days imprisonment.