

***CSN v The Queensland Police Service* [2019] QDC 43 (3 April 2019) – Queensland District Court**

‘Imprisonment’ – ‘Obstruct police’ – ‘Protection orders’ – ‘Sentencing’

Charges: Obstruction of a police officer x 1.

Case type: Appeal against sentence.

Facts: The appellant pleaded guilty to one charge of obstructing a police officer, for which he was sentenced to 4 months’ imprisonment with immediate parole release. It was alleged that the appellant made previous threats to kill his ex-wife and daughter. When the police came to his house to serve him with a police protection notice, he became aggressive and verbally abusive. The police feared a risk of serious injury, even though the appellant was not armed. He fled the property, maintaining that ‘he was not going to be served with anything and was throwing his phone away’. When he returned to the property, he continued to be abusive towards the officers. He was restrained and arrested for obstructing police ([5]-[9]). The Magistrate regarded the offence to be ‘amongst the most serious of obstruct police charges, given the facts presented here and the escalation of the situation’, and sentenced the appellant to 4 months’ imprisonment with an immediate parole release ([20]-[21]). The appellant appealed against the sentence on the ground that it was manifestly excessive and that the Magistrate had overestimated the seriousness of his offending behaviour.

Issue: The issue is whether the sentence that the Magistrate imposed was excessive having regard to the circumstances of the offending, the appellant’s antecedents, his prior criminal history, his mental health issues, his endeavours to rehabilitate and other relevant sentencing principles and guidelines ([29]).

Held: McGinness DCJ noted the appellant's extensive criminal history, which commenced when he was a child and included breaching domestic violence orders, common assault and stalking ([10]). The offence was found to have serious features, including the nature of the appellant's verbal abuse, his actions of leaving the property and saying he would continue to refuse service of the protection order. However, the Magistrate's finding that the offence was 'amongst the most serious of obstruct police charges' was an error which led to the sentence imposed being excessive ([31]). The appellant did not physically struggle with the police, and complied with police directions once he returned to the house. He also was not armed. His Honour noted that the offending must be viewed against the appellant's mental health issues at the time of offending, and childhood histories of sexual abuse at the hands of authoritative figures in a custodial setting. Other relevant factors include his genuine efforts to receive treatment and rehabilitate ([32]). Therefore, because of his criminal history, financial circumstances and his continuing efforts to rehabilitate, a probation or community service order would have been within range. His Honour allowed the appeal, and varied the sentence to 2 months' imprisonment suspended forthwith for operational period of 2 months. Even though, at first glance, this order could be mistaken for 'tinkering', his Honour maintained that reducing the sentence to 2 months was substantial ([33]).