

***Rathbone v Commissioner of Police* [2020] QDC 76 (30 April 2020) – Queensland District Court**

‘Appeal against sentence’ – ‘Manifestly excessive’ – ‘Mitigating factor’ – ‘People with mental illness’ – ‘Rehabilitation’ – ‘Separation’ – ‘Threats of suicide’

Offences: Contravention of DVO x 7; Wilful damage; Obstruct police officer; Serious assault; Attempted stealing

Proceedings: Appeal against sentence

Issue: Whether the appellant’s sentence was manifestly excessive.

Facts: The appellant man committed a series of offences in the course of an attempt to commit suicide by having police officers shoot him. The offences occurred in the context of the recent and highly distressing breakdown of his marriage. The appellant approached a police officer and assaulted her from behind, restraining her, pushing her against the police vehicle and attempting to remove her firearm from her holster (Attempted stealing). Other police officers intervened and restrained the appellant. He was arrested and later released on bail. After his release, he attended the police station and provided a personal apology and a gift, recognising the distress he caused to the officers.

While the appellant was in custody, his wife obtained a Temporary Protection Order which included a condition that he have no contact with her. He contravened this order and sent his wife short emails or text messages expressing affection for her and his desire to continue their relationship.

The appellant further applied to vary the Varied Order. The Magistrate granted a permanent stay of this application on the ground that it was an abuse of process. The appellant appealed this decision on numerous grounds, including that the Magistrate erred in: a) allowing an oThe appellant entered early pleas of guilty to all charges, was convicted and received the following sentences:

- > Contravention of a domestic violence order offences – fined \$750 and no conviction was recorded
- > Wilful damage – convicted but no further penalty imposed
- > Obstruct police officer – fined \$500 and no conviction was recorded
- > Serious assault – 2 months’ imprisonment, wholly suspended, for an operational period of 9 months and the conviction was recorded
- > Attempted stealing – 3 months’ imprisonment, wholly suspended, for an operational period of 9 months and the conviction was recorded.

The appellant appealed the sentences for Serious Assault and Attempted stealing on grounds that they were manifestly excessive, and the sentencing judge erred by not giving sufficient weight to the sentencing principle of rehabilitation.

Held: The judge allowed the appeal and referred the matter back for re-sentencing, holding that the imposition of a period of imprisonment was manifestly excessive. His Honour accepted that rehabilitation was a significant consideration in this case and the sentencing judge did not appropriately include it in his determination of a proper sentence [68]. Rather, the sentencing judge, by imposing a custodial sentence, "negatived [the rehabilitation considerations], in that they were excluded specifically with regard to their value" [69] and therefore the judge did not "fully consider and balance the issue of rehabilitation, in relation to the penalty imposed" [70].

In considering whether the appeal should be allowed, His Honour accepted a psychiatrist's report that confirmed a "causal relationship between the appellant's acute adjustment disorder with suicidal ideation upon the sudden breakdown of his marriage which led to the commission of the offences" [12]. His Honour also accepted that the appellant had exemplary antecedents and there was a negligible need for deterrence and punishment. The appellant further had a reduced moral culpability (having regard to the principles in [R v Yarwood \[2011\] QCA 367](#)).

His Honour ultimately accepted that the appellant's rehabilitation and employment were likely to be adversely affected by a sentence of imprisonment and the recording of a conviction due to his inability to travel internationally to complete his PhD studies, and his vulnerable psychological state would be adversely impacted by such a sentence [13]. His Honour further concluded that "It was significant that [his two step-daughters – ie: children of his former wife] constituted part of the appellant's support network available to the appellant" [32].