

***W v Queensland Police Service* [2013] QDC 87 (2 May 2013) – Queensland District Court**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘Assault occasioning bodily harm’ – ‘Breach of domestic violence order’ – ‘Criminal history’ – ‘Physical violence and harm’ – ‘Possession of dangerous drug’ – ‘Sentencing’

Charge/s: Assault occasioning bodily harm, breach of domestic violence order, possession of dangerous drug.

Appeal type: Appeal against sentence.

Facts: Following an argument with the complainant, the appellant followed her, grabbed her by the harms and threatened her. She broke free, but was punched by the appellant in the right side of the jaw, causing her to bleed profusely. He was highly intoxicated. That constituted the assault offence. He was found to be in possession of cannabis at the time. The breach involved the same complainant. That offence occurred when she was heavily pregnant. The appellant demanded she have sex with him and she refused. He threw her phone at her and punched a door. He was intoxicated. He had a criminal history consisting of various street offences, one conviction for assault occasioning bodily harm and one conviction for breaching a domestic violence order. He was sentenced to three months’ imprisonment for the breach charge and nine months’ imprisonment for the assault charge, and fined \$400 for the drug charge.

Issue/s: Whether the penalty was too severe. More specifically, there were issues concerning –

1. Whether the Magistrate misapplied *Earl v Heron* [2011] QDC 183.
2. Whether the Magistrate gave excessive weight to the appellant’s criminal history and the need for specific deterrence.

Decision and Reasoning: The appeal was dismissed.

1. In relation to *Earl v Heron*, the appellant submitted *inter alia* that - in that case the offender committed a random act of violence on a stranger. This case concerned violence during a heated domestic argument between long term spouses, which makes this cases less serious. This argument was dismissed – with Smith DCJ concluding at [44] – ‘*I do not accept the submission that an act of violence during a heated domestic argument between spouses is necessarily less serious than a random act of gratuitous violence on a stranger. It all depends upon the circumstances of the particular case.*’ His Honour went on to make clear that the courts cannot condone either type of violence.
2. In relation to the appellant’s criminal history, the Court concluded that the Magistrate was entitled to take into account the relevant prior convictions, and was also entitled to consider the injuries caused (a

broken jaw), which were 'reasonably significant' (See at [50]). This made it an offence not at the low end of the scale.