SUPREME COURT OF QUEENSLAND

CITATION:	*R v Maxwell* [2018] QCA 17
PARTIES:	**R** **v** **MAXWELL, Timothy Keith** (appellant/applicant)
FILE NO/S:	CA No 148 of 2017 DC No 428 of 2016
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction & Sentence
ORIGINATING COURT:	District Court at Southport – Date of Conviction: 21 June 2017; Date of Sentence: 21 June 2017 (McGinness DCJ)
DELIVERED ON:	27 February 2018
DELIVERED AT:	Brisbane
HEARING DATE:	9 February 2018
JUDGES:	Sofronoff P and Morrison and Philip McMurdo JJA
ORDERS:	**1. Appeal dismissed.** **2. Application for leave to appeal against sentence refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST CONVICTION RECORDED ON GUILTY PLEA – GENERAL PRINCIPLES – where the appellant pleaded guilty to one count of unlawful stalking and one count of attempting to pervert the course of justice – where the appellant appeared eight times before the court and on none of those occasions amended or withdrew those pleas – where the appellant submitted the pleas were made on the basis of wrongful advice and undue pressure from counsel – where the appellant contends that the pleas are irrelevant as guilt could not have been found – whether it would be a miscarriage of justice if the pleas were not set aside CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE – where the appellant was sentenced to imprisonment for 15 months for the first count and a concurrent term of 18

months in relation to the second count – where the appellant's parole release date was set for three months after the commencement of the sentence – where the appellant's conviction led to the loss of the appellant's financial services licences – where the appellant submits that this had significant personal and professional consequences – where the learned sentencing judge adverted to the adverse effect the sentence would have on the appellant's employment – where the appellant contends the learned sentencing judge gave inappropriate or little weight to that particular consequence – whether the sentence was manifestly excessive

Property Occupations Act 2014 (Qld), s 34

Meissner v The Queen (1995) 184 CLR 132; [1995] HCA 41, cited
R v AN [2003] QCA 349, cited
R v Baker [2011] QCA 33, considered
R v Getawan [2014] QCA 235, considered
R v Harnden [2003] QCA 340, cited
R v Liberti (1991) 55 A Crim R 120, distinguished
R v Macdonald [2008] QCA 384, considered
R v Nesbitt [2004] QCA 333, considered

COUNSEL: The appellant/applicant appeared on his own behalf
P J McCarthy for the respondent

SOLICITORS: The appellant/applicant appeared on his own behalf
Director of Public Prosecutions (Queensland) for the respondent

[1] **SOFRONOFF P:** I agree with the reasons of Morrison JA and with the orders his Honour proposes.

[2] **MORRISON JA:** The appellant, Mr Maxwell, had an 18-month relationship with a woman (whom I shall call X). The relationship was rocky and eventually ended just before Easter 2015.

[3] During the course of the relationship, an incident occurred during which Mr Maxwell grabbed X's handbag from her in order to search it, as a result of which she fell to the ground. He then ran off with the handbag. As a consequence X obtained a Domestic and Family Violence Temporary Protection Order.

[4] Just over two weeks later, Mr Maxwell approached X in her bedroom, yelling and screaming. He went to grab her and, as she pulled back, he broke her necklace and it scraped her neck. He was yelling "You fucking bitch. You whore". As X tried to run out of the room, he pushed her and she fell and hurt her foot.

[5] These events notwithstanding, Mr Maxwell and X continued to see each other until the relationship ended just before Easter 2015.

The stalking offence

[6] During March and April 2015, Mr Maxwell followed X when she went out to meet her friends and called her workplace using profanities such as "Tell that dog to stop fucking my girlfriend". The reference to a "dog" was to X's then employer, who had formed a relationship with her.

[7] Further, from March 2015, Mr Maxwell contacted X by telephone and text messages a total of 77 times, and on one occasion 18 messages in one day. He also sent five emails to X. X told the police that she found the constant messages, phone calls and emails "scary" and the messages were "threatening and harassing". X said she had asked him to stop harassing her, but he continued, saying that he thought they would be "together forever".

[8] That conduct led to Mr Maxwell being charged with unlawful stalking, that being a domestic violence offence.

The attempt to pervert the course of justice

[9] Between 12 April and 15 April 2015 Mr Maxwell sent two emails to X. The tenor of the emails was that Mr Maxwell possessed a recording of a conversation with X, during which she made certain statements which her new partner would find objectionable, and two tapes of X and himself having sex. The emails threatened that if X did not withdraw any police complaint against him, Mr Maxwell would release the tapes. The emails also said that he preferred a signed withdrawal witnessed by a Justice of the Peace, and upon that being emailed to him he would give X the tapes or destroy them.

[10] In the emails he also suggested to X that she not turn up at any proceedings that might arise from her complaint. Mr Maxwell also said "I do not want any harm of you (unless you keep this shit up)...".

[11] That conduct resulted in count 2, a charge of attempting to pervert the course of justice, also a domestic violence offence.

Plea and sentence

[12] Mr Maxwell was convicted on his own pleas on 21 June 2017. As a consequence he was sentenced as follows:

(a) unlawful stalking: 15 months' imprisonment, with a parole release date of 20 September 2017 (three months after the sentence commenced); and

(b) attempting to pervert the course of justice: a concurrent term of 18 months' imprisonment, with the same date for parole release.

[13] Mr Maxwell appeals against his conviction on the grounds that he "was given inaccurate legal advice and on the basis of the evidence the Crown could not have obtained a conviction".

[14] Mr Maxwell also seeks leave to appeal against the sentences imposed, contending that they are manifestly excessive.

The circumstances of the offending conduct

[15] The offending conduct is set out above. The only aspects necessary to add are these:

(a) in respect of the stalking charge, when interviewed Mr Maxwell admitted the text messages were from him and that he was the only one who had used his mobile phones; he said that the messages "weren't good, and not appropriate in light of the DVO in place";

(b) in respect of the attempt to pervert the course of justice, in a police interview Mr Maxwell said he was the only one to use his email address and the emails were from him; he said that the emails could not be a threat because he didn't have any sex tapes and that what he had done was "tit for tat" as X said that she had tapes of him; he agreed the emails were inappropriate and probably not in compliance with the DVO order; he dismissed the email passage where he said he did not want to harm X "unless you keep this shit up", by saying that X lied about his putting hands on her throat; and

(c) X told the police that when Mr Maxwell threatened to play recordings of the two of them having intercourse if she did not withdraw the charges against him, she "felt intimidated and frightened"; she said he had done too many things and she had repeatedly asked him to stop contacting her.

The pleas of guilty

[16] On 11 October 2016 Mr Maxwell was arraigned for the first time. He was then legally represented. He entered a plea of guilty to each charge.[1]

[17] Between then and 21 June 2017 there were eight appearances, on seven of which Mr Maxwell was legally represented, appearing on his own behalf on one or possibly two occasions.[2] On none of these occasions were the pleas withdrawn or amended, though a change of plea application was foreshadowed.

[18] On 21 June 2017 Mr Maxwell appeared, represented by counsel and solicitors. There was an amendment to the indictment and the learned sentencing judge directed that Mr Maxwell be re-arraigned. That was done in respect of the charge which had been amended (unlawful stalking) and once again Mr Maxwell entered a plea of guilty. The learned sentencing judge was told, without objection, that the original plea on count 2 stood as it was.

Approach of the sentencing judge

[19] The learned sentencing judge was told, without contradiction, that a schedule of facts had been agreed.[3]

---

1 Appeal Book (**AB**) 8.

2 On 10 November 2016 Mr Maxwell's solicitors withdrew. I will refer to this appearance later.

3 Exhibit 4.

[20] In the course of submissions counsel for Mr Maxwell reminded the learned sentencing judge that the sentence was proceeding on the basis of a plea of guilty, which had been entered previously.[4] Counsel also tendered a psychological report,[5] references,[6] qualification documents[7] and copies of certain provisions of the *Property Occupations Act* 2014 (Qld) and the *Corporations Act* 2001 (Cth).

[21] The psychologist's report contained the following passage recorded as Mr Maxwell's explanation in respect of the offending conduct:

> "Mr Maxwell … engaged in the offending behaviours to encourage communication with [X], and have her settle the Domestic Violence Order. He asserted that throughout this time, he was in consensual communication with [X], and he believed that the emails referred to as his attempt to pervert justice, had been saved from a period in their relationship prior to the offending time. Mr Maxwell reported that he did not have visual recordings of sexual acts with [X], and he believed that due to him not having them, his threats were therefore invalid."[8]

[22] The references numbered six and included one from his brother and one from his son. All attested to his good character and behaviour.

[23] The learned sentencing judge referred to Mr Maxwell's age (62 years), his "insignificant Queensland history". His Victorian criminal history revealed a prior conviction in November 2012 for breach of a family violence order.[9]

[24] Having detailed the circumstances of the offending conduct her Honour noted that the stalking was over a six week period, and described count 2 as the "more serious" count.[10]

[25] Specific factors adverted to by the learned sentencing judge include the following:

(a) there was no victim impact statement from X, but it was clear that the offences would have had some adverse emotional impact upon her;

(b) Mr Maxwell's background as detailed in the psychologist's report;

(c) his long and varied career as a journalist, in hotel and property management, and as a financial advisor;

---

4 AB 20 line 44.

5 Exhibit 5.

6 Exhibit 6.

7 Exhibit 7.

8 AB 45.

9 AB 35.

10 AB 29 line 36.

(d) the fact that the sentence would "have an adverse effect on a number of areas of employment that you might wish to pursue, due to the fact that you require licences for some of those areas of work";

(e) the fact that the psychologist's report had identified personality issues, a lack of insight into the serious nature of his conduct, and the need for therapy; further, that Mr Maxwell was experiencing features "consistent with major depressive disorder", and there were a number of other complex personality disorders from which he suffered;

(f) the fact that the references were from people who spoke highly of him, though some did not appear to know the purpose of the reference; further, the letter from Mr Maxwell's brother, who identified Mr Maxwell as having a fragile mental state, and noted his own commitment to supporting Mr Maxwell;

(g) the pleas of guilty and co-operation with the authorities;

(h) the need for general and specific deterrence and protection of the community;

(i) that the offence of stalking was serious because it occurred during a time when he was subject to court orders; and

(j) that what was "most concerning" was the added offence of attempting to pervert the course of justice, which showed a clear disregard for court orders.

[26] The learned sentencing judge paraphrased the following passage in *R v Harnden*:[11]

> "This court in *R v Morex Meat Australia Pty Ltd and Doube* [1996] 1 Qd R 418 at 444-5 considered the appropriate sentence for the offence of attempting to pervert the course of justice. A number of cases were reviewed and the court observed that "a singular feature is that they all attracted terms of imprisonment to be actually served." Given the appellant's criminal history, and the fact the offence in question was committed whilst he was on bail, a significant custodial sentence was called for. As has been observed in a number of cases, the offence of attempting to pervert the course of justice, like perjury, is a crime that strikes at the heart of the administration of justice. That is a circumstance which must be given significant weight when a court is considering the appropriate penalty to impose for such an offence."

[27] The learned sentencing judge structured the sentences so that Mr Maxwell would "serve a short period of imprisonment to reflect the serious features of these cases".

---

[11] [2003] QCA 340, 6-7 [32], per Williams JA concurring with McMurdo P. See AB 31.

Her Honour noted, however, that it was a period of imprisonment which would be "shorter than that would normally have been imposed".[12]

Submissions by Mr Maxwell

[28] In respect of the sentence application Mr Maxwell submitted that the loss of his profession and licences made the sentence manifestly excessive. This was a reference to the fact that he could no longer work in investment and mortgage broking because of the loss of his financial services licence.

[29] In respect of his conviction Mr Maxwell contended that it ought to be quashed because:

(a) he had now served his time, referring to the fact that his period of actual imprisonment expired on 20 September 2017; and

(b) the sentence was preventing him from carrying on his profession as a financial services advisor.

[30] Mr Maxwell's written submissions were lengthy, convoluted, and in many ways hard to decipher. Doing the best that I can, the following points were made:

(a) he should not have been convicted of attempting to pervert the course of justice because the police charges could not be withdrawn, as was demonstrated by the fact that X had previously, but unsuccessfully, attempted to have the charges withdrawn;

(b) that his "real actions" both before and after the alleged offence demonstrated that he was attempting to ensure X's court appearances were met by her;

(c) that the emails and phone messages were either "to find her while having an affair", or "to get a reaction from her";

(d) he had attended more than 30 court appearances in the course of the relationship with X, which demonstrated that he wished or intended that the charges be dealt with, not withdrawn;

(e) that at the time of the charge of attempting to pervert the course of justice, the stalking charge and the alleged DVO breach had been withdrawn due to "police bungling & contradiction of evidence"; therefore the charge of attempting to pervert the course of justice was "invalid/did not exist at the time of judgment";

(f) that the police had "illegally/invalidly [taken] reports from a drunken individual", referring to X;

(g) everything in the schedule of facts was "utterly false" and originated "from drunken hysteria";

(h) comparable cases revealed the stalking penalty to be excessive, but in any event the stalking finding was based on a fallacy because his

---

12 AB 31 line 34.

actions in grabbing X's handbag were to stop her from drink-driving and the messages were in an attempt to try to find her;

(i) that the convictions meant he could not renew his licences as a financial advisor, real estate agent or mortgage broker; his ability to obtain and maintain employment was thus destroyed;

(j) he disputed some of the facts in the agreed schedule, particularly those that referred to him ringing X's workplace and sending numerous text messages;

(k) that the learned sentencing judge failed to "converse/comply" with the psychologist's report and had refused to accept references from parties knowing both X and himself;

(l) that his guilty pleas were the result of wrongful advice or undue pressure; one of his legal team made him sign a short statement to confirm his acceptance of a guilty plea, despite "my absolute stance of not guilty";

(m) that when represented by Legal Aid lawyers, they gave their opinion that "the likelihood of being able to successfully reverse the plea were [sic] slim, and based on that advice, Legal Aid would not represent me …"; and

(n) that the barrister who appeared on his sentence took an "aggressive non-compliant approach" and Mr Maxwell was under "the constant threat" that if he wanted to change his plea he "may be doing it alone without representation & without funding".

[31] As best one can synthesise the grounds advanced on the appeal and in respect of the sentence, they come to this:

1. It would be a miscarriage of justice if the guilty pleas were not set aside because he could not be found guilty of the offence, acted under wrongful advice and was under undue pressure in entering the plea; and

2. The sentences are manifestly excessive because the learned sentencing judge gave inappropriate or no weight to certain factors, and the professional and personal consequences of losing his licences.

Discussion – guilty plea

[32] This ground can be dealt with in relatively short terms. Mr Maxwell was first arraigned on 11 October 2016, at which time he entered guilty pleas. There is not the slightest suggestion in the material that he was, at that time, the subject of any undue pressure or improper advice, or somehow unable to make a rational decision for himself. The lawyers who are the subject of his complaints appeared for him at a later time.

[33] Between the first arraignment and the second on 21 June 2017, there were eight appearances and only one of which was where Mr Maxwell represented himself.[13] The court order sheet notes that on 16 December 2016 a change of plea application was to be made.[14] That was mentioned again on 2 February 2017, but not thereafter. Legal Aid Queensland was given leave to withdraw on 15 June 2017, six days before the second guilty pleas were entered.

[34] Mr Maxwell's submissions referred directly to, or at least reflected the nature of, the advice he was given in respect to the pleas entered on 21 June 2017. It was that "to plead guilty would deliver concessions from the Judge, would save huge costs of full trial that would go for days, would save putting witnesses through cross-examination, and that would help my case". As to the costs impact, his lawyer advised, "I did not have the money to commit to trial", and he used the analogy of "having the best Mercedes compared to having an old shit box car that would cost you forever".[15]

[35] Mr Maxwell added that his then lawyer "was unsure of proving not guilty intent".[16] None of the advice referred to has been demonstrated to be an error. On the contrary, in the circumstances of the admissions made during the police interview, and in the face of the fact that the conduct was recorded in text messages and emails, the advice was sound.

[36] The observations of the High Court in *Meissner v The Queen*[17] are pertinent:

> "A person charged with an offence is at liberty to plead guilty or not guilty to the charge, whether or not that person is in truth guilty or not guilty. An inducement to plead guilty does not necessarily have a tendency to pervert the course of justice, for the inducement may be offered simply to assist the person charged to make a free choice in that person's own interests. A court will act on a plea of guilty when it is entered in open court by a person who is of full age and apparently of sound mind and understanding, provided the plea is entered in exercise of a free choice in the interests of the person entering the plea. There is no miscarriage of justice if a court does act on such a plea, even if the person entering it is not in truth guilty of the offence."

[37] *Meissner* also contained observations by Dawson J as follows[18]:

---

13 That was on 15 November 2016. It is possible that on 10 November 2016 when Mr Maxwell's then solicitors withdrew he could be said to have been acting for himself, but that seems to have been a mention merely to enable the withdrawal: AB 3.

14 AB 4.

15 Applicant's Submissions, 10-11.

16 Applicant's Submissions, 11.

17 (1995) 184 CLR 132 at 141 [22], per Brennan, Toohey and McHugh JJ; [1995] HCA 41.

18 *Meissner* at 157 [19]. Citations omitted.

> "It is true that a person may plead guilty upon grounds which extend beyond that person's belief in his guilt. He may do so for all manner of reasons: for example, to avoid worry, inconvenience or expense; to avoid publicity; to protect his family or friends; or in the hope of obtaining a more lenient sentence than he would if convicted after a plea of not guilty. The entry of plea of guilty upon grounds such as these nevertheless constitute an admission of all the elements of the offence and a conviction entered upon the basis of such a plea will not be set aside on appeal unless it can be shown that a miscarriage of justice has occurred. Ordinarily that will only be where the accused did not understand the nature of the charge or did not intend to admit he was guilty of it or if upon the facts admitted by the plea he could not in law have been guilty of the offence. But the accused may show that a miscarriage of justice occurred in other ways and so be allowed to withdraw his plea of guilty and have his conviction set aside."

[38] Nothing in what Mr Maxwell has raised gives rise to a credible suggestion that the pleas of guilty, on either of the two occasions when they were entered, were entered otherwise than of his own volition and in the exercise of his own free choice. In this respect it must be remembered that the offending conduct was admitted by Mr Maxwell during the police interviews, though he disputed whether it was threatening or amounted to an interference in an attempt to pervert the course of justice. By the time the pleas of guilty were entered Mr Maxwell was legally represented and it should be inferred that he was in receipt of legal advice about his position. Indeed, he complains, in an unsubstantiated way, about the very fact of his advice in relation to the pleas entered on 21 June 2017.

[39] As the court order sheet reveals, a change of plea application was foreshadowed on 16 December 2016. That apparently was still in contemplation on 2 February 2017, but was not mentioned thereafter. One can gather from Mr Maxwell's assertion in paragraph [30](m) that his lawyers advised him that his chances of setting aside the pleas were slim. Indeed, it can be inferred that Legal Aid withdrew because Mr Maxwell would not accept the advice he was given on that issue.

[40] Be that as it may, new lawyers were retained and on their advice the guilty pleas were maintained. There is no credible case that Mr Maxwell was overborne by undue pressure or improper legal advice as to the pleas.

[41] There is no suggestion that Mr Maxwell misunderstood the charges when he entered his pleas. None of his assertions is substantiated in terms of being supported by affidavit material, nor is any factual material provided to lend credence to mere assertion.

[42] One can put to one side Mr Maxwell's assertions that he could not have been guilty of attempting to pervert the course of justice because the charges could not be withdrawn in any event. There is simply no adequate factual foundation to embark upon such a consideration, even if the submission otherwise had any legal validity.

[43] Equally, in the absence of any proper evidentiary foundation, one can put to one side Mr Maxwell's assertions that what he did was simply to get a reaction, in an attempt to find out where X was, or was otherwise "phony".[19]

[44] Mr Maxwell's attack on the pleas of guilty have no merit. There is no basis upon which they could or should be withdrawn. This ground fails.

Discussion – the sentences

[45] The central factor to which Mr Maxwell points is the impact upon his ability to hold licences in the area of financial services, and therefore his ability to conduct businesses related to that. As observed earlier that was a feature of the case raised specifically by Mr Maxwell's own counsel on the course of submissions.[20] Having placed provisions of the *Property Occupations Act* 2014 (Qld) and the *Corporations Act* 2001 (Cth) before the learned sentencing judge, Mr Maxwell's counsel observed "so he loses one licence but does not necessarily lose the second".[21]

[46] Mr Maxwell's current submission cannot be accepted. Section 34 of the *Property Occupations Act* 2014 (Qld) places the licence in jeopardy merely upon conviction of a serious offence. There is little doubt that the offence of perverting the administration of justice falls within the definition of "serious offence". Thus, it could only be if the conviction was set aside that the matter could be remedied. The conviction was based upon the entry of a plea of guilty, and the plea has not been set aside.

[47] Further, the impact of this aspect of conviction and sentence was specifically adverted to by the learned sentencing judge:[22]

> "You have a long and varied career, working as a journalist in hotel and property management, and as a financial advisor, and I have a number of certificates to confirm the [licences] and diplomas that you have successfully received and undertaken. Your sentence today will have an adverse effect on a number of areas of employment that you might wish to pursue, due to the fact that you require [licences] for some of those areas of work."

[48] Mr Maxwell did not point to any other aspect of the sentence by which it could be said to have been manifestly excessive. All his references, vague though they were, to so-called comparable cases were to cases where convictions were not recorded because of the financial impact upon the defendant. Reference was made by Mr Maxwell to *R v Liberti*[23] but that concerned a circumstance where it became apparent that negligent legal advice was given in respect of entering a plea to conduct which, on the face of it, could not have been an offence. That is a situation far removed from that of Mr Maxwell.

---

19 A phrase used by Mr Maxwell to suggest his actions were feigned, not real.

20 AB 17 lines 3-20.

21 AB 17 line 19.

22 AB 30 lines 17-22.

23 (1991) 55 A Crim R 120.

[49] Some further matters should be noted. Mr Maxwell's counsel at the time sought a sentence on the stalking charge falling between 18 months' and two years' imprisonment. In that respect, distinguishing the decision of this court in *R v AN*[24], what counsel said was:

> "I respectfully submit to you that the appropriate sentencing range falls … somewhere between 18 months and two years' imprisonment. … I advance 18 months primarily on the basis that AN was three years reduced to two for far more serious circumstances, objectively, although I do concede that … McDonald is fairly strong authority for … the submission that two years is within range for offending which is, objectively, a little more serious."[25]

[50] In respect of the count for attempting to pervert the course of justice no specific term was advocated.

[51] At the sentence hearing the focus of the submissions by counsel for Mr Maxwell was to urge a sentence which saw him immediately released on parole.[26] Immediate release was an unlikely proposition given what was said in *Harnden*, and what was said by the psychologist in the report, namely that "Mr Maxwell meets the criteria for the resentful type stalker, with risk of reoffending ranging in the moderate to high range".[27]

[52] Reference to other decisions of this court lends no support for the proposition that the sentences imposed were manifestly excessive.[28]

[53] *Baker* was a stalking sentence of two years' imprisonment, to serve 12 months. It was imposed after a trial, on a 43 year old man who stalked the mother of a girl with whom he had a prior relationship. He had a paranoid personality disorder, leading to a lack of insight and remorse, and doubt about rehabilitation. Personal deterrence loomed large in the sentence. This court did not interfere.[29]

[54] In the course of the reasons in *Baker* the court reviewed *Macdonald*, noting that it involved a two year sentence, and that court had said:[30]

> "There is no well-defined and constraining range for stalking offences, obviously because of the particularly wide variety of these cases which regrettably emerges."

---

24 [2003] QCA 349.

25 AB 25 lines 25-31.

26 AB 26 lines 21 and 38.

27 AB 54.

28 See *R v Baker* [2011] QCA 33; *R v Macdonald* [2008] QCA 384; *R v Nesbitt* [2004] QCA 333 and *R v Getawan* [2014] QCA 235.

29 Chesterman and White JJA, McMurdo P dissenting.

30 *Baker* at [54]-[56], referring to *Macdonald* at [21].

[55] *Nesbitt* involved an 18 month sentence imposed on a 47 year old man, after a trial on stalking charge. The offender set out to harass the complainant which included violence against her car which he wilfully damaged. He involved others in his six-month campaign, affecting their families' lives and peace of mind. The court did not interfere with the sentence.

[56] *Getawan* was a charge of attempting to pervert the course of justice. It involved a 15 month sentence, with immediate parole, imposed on the guilty plea of a 40 year old man who made numerous calls to his 18 year fiancé, asking her to put pressure on two others to refrain from giving evidence against him. She did not do so. He had a lengthy criminal record. The sentence was not altered though the court describing it as involving "considerable lenience".[31]

[57] To the extent that there were mitigating features in Mr Maxwell's case, they were taken into account by the learned sentencing judge. Thus, her Honour made reference to the sadness in his personal background, the impact upon the areas of his employment, the matters in the psychological report, the high praise evident from the references, his pleas of guilty and co-operation in the administration of justice. As the learned sentencing judge rightly observed, the offence of attempting to pervert the course of justice nonetheless called for the imposition of a custodial term and the matters both in respect of that charge and evident from the psychological report warranted parole upon release, rather than suspension.

[58] The sentences cannot be demonstrated to be manifestly excessive.

Disposition of the appeal and application

[59] For the reasons given above I would dismiss the appeal against conviction and refuse the application for leave to appeal against sentence.

[60] **McMURDO JA:** I agree with Morrison JA.

---

[31] *Getawan* at [15].