SUPREME COURT OF QUEENSLAND

CITATION:	*R v Manyok* [2019] QCA 117
PARTIES:	**R** **v** **MANYOK, Malual Monyjok** (appellant/applicant)
FILE NO/S:	CA No 114 of 2018 CA No 153 of 2018 SC No 569 of 2018
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction & Sentence
ORIGINATING COURT:	Supreme Court at Brisbane – Date of Conviction: 4 May 2018; Date of Sentence: 19 June 2018 (Davis J)
DELIVERED ON:	14 June 2019
DELIVERED AT:	Brisbane
HEARING DATE:	29 May 2019
JUDGES:	Gotterson and Philippides JJA and Ryan J
ORDER:	**Application for leave to appeal against sentence refused.**
CATCHWORDS:	CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – SERIOUS OR VIOLENT OFFENDER – where the applicant was convicted of unlawfully doing grievous bodily harm with intent to do grievous bodily harm – where the applicant was sentenced to a term of seven years' imprisonment with a declaration that the offence was a serious violent offence – where the applicant contended on appeal that the declaration had been imposed on the basis of previous offending by him contained in a Victorian criminal history report tendered during sentencing – where the applicant also contended that his criminal history report had errors in it – whether the applicant's history of offending in Victoria played a part in the fixing of the sentence by the learned sentencing judge – whether the sentencing discretion miscarried
COUNSEL:	The appellant/applicant appeared on his own behalf D Balic for the respondent
SOLICITORS:	The appellant/applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

[1] **GOTTERSON JA:** At a trial in the Supreme Court at Brisbane, the applicant, Malual Monyjok Manyok, was found guilty of an offence against s 317 of the *Criminal Code* (Qld). He was charged with unlawfully doing grievous bodily harm to the female complainant, Ms Roselyn Aryemo, with intent to do some grievous bodily harm to her. The offence was a domestic violence offence.

[2] The applicant was convicted on 4 May 2018. At a sentence hearing on 19 June 2018, he was sentenced to a term of imprisonment of seven years. A declaration was made that the offending was a serious violent offence. A period of some 629 days pre-sentence custody was declared to be time served under the sentence.

[3] On 11 May 2018, the applicant filed a notice of appeal against conviction (CA No 114 of 2018).[1] Later, on 20 June 2018, he filed a separate application for leave to appeal against sentence (CA No 153 of 2018).[2]

Conviction appeal

[4] The sentence application was heard on 29 May 2019. At the hearing, the applicant informed the Court that he did not wish to proceed with the conviction appeal. In substance, he has abandoned it.

Sentence application

[5] The application for leave states as the ground of appeal that the sentence is manifestly excessive.

[6] However, in a short handwritten submission filed by the applicant on 14 May 2019, he stated that he wished to appeal against his sentence only in respect of the serious violent offence declaration. The applicant's contention was that the declaration had been imposed on the basis of previous offending by him in Victoria as set out in a Victoria Police Criminal History Report tendered by the prosecutor without objection at the sentence hearing.[3] His complaint was that there were factual errors in that report.

[7] At the hearing of the application, the applicant elaborated upon that submission by explaining that apart from misspelling his name and, in several places, misstating his date of birth, the report failed to particularise when an offence of hindering police committed by him had occurred. However, most significant in the applicant's eyes, was a statement in the report that he had twice committed an aggravated assault on a person under 15 years of age. The statement was wrong in two respects, the applicant submitted. He said that he committed only one aggravated assault in Victoria and that the female victim was then 19 years old, not under 15 years of age.

[8] The applicant did not seek leave to adduce evidence that the victim of the aggravated assault in Victoria was in fact 19 years old at the time. It is unnecessary, in any event, for this Court to determine whether the report was erroneous in this respect or not. That is so because it is tolerably clear from the remarks of the learned sentencing judge that he did not make the serious violent offence

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1 AB 1 1-3.
2 AB 1 4-6.
3 Exhibit 1: AB 2 261-269.

declaration because of the applicant's history of offending in Victoria, or because of any aspect of it.

[9] In the course of his remarks, his Honour said:

> "You have a criminal history in Victoria. There are some offences of violence, but it is not, in the overall scheme of things, a particularly significant history. You have, though, spent time in custody previously, serving a month for one of the offences of dishonesty."[4]

[10] After referring to some aspects of the applicant's personal antecedents, the learned sentencing judge identified as a point of difference in the submissions before him that the prosecutor had asked that a serious violent offence declaration be made and that defence counsel had opposed that course. His Honour continued:

> "The appropriate approach is to approach the sentence more globally than that, by reference to the legislation and by reference to the relevant principles, and determine what the relevant sentence should be and in that way determine whether a feature of the sentence should be the imposition of a serious violent offence declaration under section 161B. The Crown Prosecutor has identified a number of features which he submits means that the sentence should attract a serious violent offence declaration. Firstly, he says that the motivation was unreasonable jealousy. I accept that. It seems that you had a view of the relationship which was somewhat different to Ms Aryemo. That is corroborated to some extent by your brother's reference and the fact that Ms Aryemo was continually rebuffing you on the evening of the offending. She was seated when you attacked her. She was speaking on the telephone. She was, therefore, in a vulnerable position.
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> There have been submissions made to me about the extent to which you planned the attack. I have no doubt that it was not premeditated in the sense that you did not appear at the function that night with a view to hurting her. It seems that what has occurred is she has rebuffed you during the evening. You have then seen her on the telephone speaking to somebody else. You have then, though, formed a plan to hurt her. You have walked from the lounge to the kitchen. You have located the knife. You have then walked back and you have stabbed her. The attack, therefore, was not spontaneous. You had time to think about what you were doing and what you would do.
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> Mr Bain put that there was some subterfuge in that you hid the knife behind your back. As a matter of fact, that seems to be correct. More worrying, though, is not so much a question of subterfuge, it is more what that says about your intention. And I find that by hiding the knife behind your back, you intended to take her by surprise and take advantage of her vulnerability while she was on the telephone. It was a large knife, an imposing weapon. It was thrust into her abdomen. Mr Bain also points to the fact, and I accept, that there was obviously a continuing assault thereafter. All up there were at least, it seems,

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4 AB 2 250 ll17-20.

> six stabs, including the one to the abdomen. The level of violence can be seen by the fact that the grievous bodily harm was serious. There was a laceration to the liver and the knife penetrated some part of the kidney."[5]

[11] It is evident from these sentencing remarks that is was upon those aspects of the offending for which the applicant was being sentenced that his Honour fixed the sentence as one of seven years imprisonment and made the serious violent offence declaration. The history of offending in Victoria played no part in that.

[12] The position then is that the applicant's challenge to the serious violent offence declaration is founded upon a misapprehension by him as to the basis upon which it was made. It would be inappropriate to grant him leave to appeal his sentence on that mistaken basis.

[13] I would add for completeness and without implying that there would have been any merit in such an argument, that the applicant did not argue that the circumstances of the offending for which he was being sentenced did not themselves justify the making of a serious violent offence declaration. Nor did he advance any other argument for his contention that his sentence is manifestly excessive.

Order

[14] I would propose the following order:

1. Application for leave to appeal against sentence refused.

[15] **PHILIPPIDES JA:** I agree with the reasons of Gotterson JA and the order his Honour proposes.

[16] **RYAN J:** I agree with the order proposed by Gotterson JA for the reasons given by his Honour.

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[5] AB 2 250 l38 – AB 2 251 l24. His Honour had earlier mentioned that the complainant has very serious scarring as a result of the stabbings: AB 2 250 ll12.