**[2019] QCA 112**

**COURT OF APPEAL**

**FRASER JA**
**PHILIPPIDES JA**
**RYAN J**

**CA No 317 of 2018**
**DC No 288 of 2018**

**THE QUEEN**

**v**

**ROWLANDS, Jeffrey Craig** **Applicant**

**BRISBANE**

**MONDAY, 10 JUNE 2019**

**JUDGMENT**

**RYAN J:** The applicant was convicted after a five day trial of eight offences of violence which occurred in the course of two episodes. The victim of his offences was his then girlfriend. He was acquitted of a wilful damage offence, the damage having allegedly occurred during the second episode of violence. He was also acquitted of sexual offences allegedly committed upon the complainant.

The circumstances of the offences of violence are as follows. On 21 February 2016, the applicant and the complainant were at his property. He became enraged when she put ornaments made by his daughter into a garbage bag. The applicant screamed at the complainant. He pushed her in the chest, causing her to fall into the bathtub, hitting her head: Count 5: common assault.

He dragged her into the bedroom. He picked her up by the shoulder and slammed her down onto the concrete floor. She landed on her shoulder, causing her excruciating pain. She suffered a full thickness tear to her rotator cuff: Count 6: assault occasioning bodily harm. For weeks thereafter, she had difficulty lifting her arm and suffered considerable pain and discomfort. He smashed household items and threatened to "get rid of" her: Count 7: threatening violence.

He took the front gate key and her phone from her, and dragged her to the couch. He made her sit there, and said to her that if she kissed him, it would be okay. He kept her with him on the couch for the night: Count 8: deprivation of liberty. He ultimately let her leave the property.

About a month later, on 28 March 2016, the applicant was at his property with his daughter and the complainant. He swore at them. The complainant left the property, or attempted to, in her car, driving down a dangerous, narrow driveway. The applicant drove after her, overtook her and pulled in front of her. He then applied the brakes, which caused a minor collision between the cars: Count 9: dangerous operation of a motor vehicle.

The complainant refused to unlock the car. The applicant attempted to smash the rear window with a wheel brace. The complainant unlocked the car, and the applicant partially entered into it to pull her out of the car and onto the ground: Count 10: unlawfully entering a motor vehicle with intent to commit an indictable offence in the night with violence while armed.

He then threatened her to unlock her phone: Count 12: threatening violence. Using the wheel brace, he struck her arm and injured it: Count 11: assault occasioning bodily harm while armed. He wrapped his hand around her hair and threw her over an embankment. She was able to pull herself up, and was allowed to leave. He told her that he would kill her if she ever told anyone what had occurred.

The applicant had no prior criminal history. When police spoke to him, he declined to be interviewed.

The trial was conducted on the basis that the complainant was a liar, motivated to lie to support a claim for damages for personal injuries.

At sentence, his Honour took a global approach. He imposed the highest penalty, of three years imprisonment, for the offence of assault occasioning bodily harm whilst armed in the night time. That was the offence which involved the applicant's striking his girlfriend's arm with a wheel brace, causing the most serious of the injuries suffered by her. His Honour imposed shorter, concurrent terms of imprisonment for the other offences.

At first instance, the applicant's counsel initially submitted that it would be appropriate for his Honour to suspend the sentence of three years imprisonment after the applicant had served six to nine months of it, even though the applicant had gone to trial, because of matters personal to the applicant which I will mention in a moment.

She revised her submissions in the course of the sentence hearing, contending that the applicant should not serve more than 12 months' imprisonment. The prosecutor submitted, in effect, that his Honour would fall into appellable error were he to suspend the sentence after that relatively brief period.

Ultimately, his Honour ordered that the term of imprisonment be suspended after the applicant had served 15 months of it – that is – after he had served about 41 per cent of it, with an operational period of four years.

The applicant seeks leave to appeal against sentence. He takes no issue with the head sentence, but contends that the requirement that he serve 15 months' imprisonment before his release caused the sentence to be manifestly excessive. He also contends that the sentencing judge failed to give appropriate weight to matters in mitigation, in their combination. The applicant seeks his release today, having served about 10 months of the three year sentence, or after having served 12 months of it.

An argument that a sentence is manifestly excessive cannot succeed unless, having regard to all relevant sentencing factors and the degree to which the sentence imposed differs from

those imposed in other like cases, the court concludes that there must have been some misapplication of principle for the sentence to have been as heavy as it was, or that the sentence is unreasonable or plainly unjust.

The applicant does not rely upon any comparable decisions in making his argument that a manifestly excessive sentence was imposed in this case. A statement that the primary judge failed to give sufficient weight to the combination of matters in mitigation does not identify a relevant error or the misapplication of principle. The extent to which matters in mitigation warrant a reduction in penalty is a matter for the sentencing judge. As has been said many times, sentencing judges are to be allowed as much flexibility in sentence as is consonant with consistency of approach, and accords with the applicable statutory regime.

The sentencing judge was referred to one case by the prosecutor, *R v RAP* (2014) 244 A Crim R 477, and none by the applicant. RAP's antecedents were similar to those of the present applicant. They were both well-educated, mature men with no criminal history. RAP pleaded guilty to offences of assault occasioning bodily harm and wilful damage.

In a sustained but single episode of violence, RAP assaulted his former wife by delivering about 12 blows to her head and multiple blows to her back. He kicked her in the head and made death threats to her. He pursued her when she tried to seek refuge in a bathroom – damaging the door in his effort to get to her. She suffered three facial fractures. He was sentenced to two years' imprisonment with suspension after eight months, for an operational period of two and a half years.

Because RAP's assault did not involve a weapon, the maximum penalty for the offence of assault occasioning bodily harm in his case was one of seven years' imprisonment, not 10 years' imprisonment as in the present case where a weapon was used. RAP entered timely pleas of guilty, although his remorse was limited against the background of an acrimonious break-up and Family Court proceedings. He had sought treatment before the offending occurred and continued in treatment thereafter. He was a likely candidate for rehabilitation. He had been publicly shamed.

His application for leave to appeal against sentence was refused. The head sentence of two years' imprisonment was described as "far from excessive", and its suspension after eight months was held to reflect a proper balance of mitigating factors against the vicious and sustained nature of the assault upon the complainant and its consequences for her.

In determining the matter, Justice Alan Wilson, with whom the other members of the court agreed, reviewed many decisions involving assaults by men upon their women partners or former partners. His Honour stated that in the case of a serious assault in a domestic setting, a sentence of imprisonment of two years or more was plainly within the proper sentencing range.

*RAP* has limited relevance in the present case because it involved only one incident of violence, to which RAP pleaded guilty, and because it was imposed having regard to a lower maximum penalty than the maximum penalty applicable in the present case.

The applicant does not refer to anything in the sentencing judge's approach to the determination of an appropriate penalty, nor in the sentence actually imposed, which suggests that his Honour misapplied any principle or imposed an unjust penalty upon the applicant.

The applicant suggested at first instance that he warranted what might be thought to have been lenient treatment after a hard fought trial because his case was "so unusual". A similar submission is made now.

As experience has shown, and as the cases discussed in *RAP* illustrate, there is nothing exceptional about an offender of this type having no prior convictions, or in his being a well-educated man in employment at the time of the offending who has contributed to the community in various ways. There is nothing unusual in the fact that the applicant has moved onto a relationship in which there is no violence, or that he has a good relationship with his daughter. There is nothing unusual in the fact that his mother will be deprived of his care whilst he is in custody. There is nothing unusual in the fact that he committed these offences while affected by personal stress.

The applicant refers to the fact that, as was the case in *RAP*, he was seeking psychological support at the time of the commission of the offences, as a matter in his favour. However, whatever insight that suggested had to be measured against the facts that the applicant was seriously violent towards his partner on two occasions, and conducted the trial on the basis that she was a liar, and that it was only after his convictions that he felt, in his own words, "some" shame and remorse.

Further, in my view, there is nothing so unusual in the combination of all of those factors as to warrant the lenient treatment sought after a trial. Nor is the applicant's low risk of recidivism, now that he is out of his relationship with the complainant, so remarkable as to warrant a greater reduction in penalty than the reduction granted at first instance.

In addition to the features nominated by the applicant, his Honour took into account, in the applicant's favour, that he had settled a personal injuries claim by the complainant for $200,000, noting that settlement had not been accompanied by pleas of guilty to the offences of violence.

His Honour was correct in treating with caution submissions about the applicant's remorse. Nevertheless, his Honour required the applicant to serve less than 50 per cent of the head sentence imposed in custody before his release, taking into account, among other things, his delayed remorse.

I consider the sentence actually imposed a distinctly moderate one. It gave appropriate weight to the principles of general and personal deterrence and community denunciation, balanced against matters personal to the applicant. Nothing about his Honour's approach to penalty or the outcome suggests an error of principle of the relevant kind. I would refuse the application for leave.

**FRASER JA:** I agree, and would particularly endorse Justice Ryan's remark that the sentence is distinctly moderate in the circumstances.

**PHILIPPIDES JA:** I also agree, and would wish to add my support to the additional comments made by Justice Fraser.

**FRASER JA:** The application for leave to appeal is refused.