SUPREME COURT OF QUEENSLAND

CITATION:	*R v Monro* [2002] QCA 483
PARTIES:	**R** **v** **MONRO, Jason Matthew** (applicant)
FILE NO/S:	CA No 247 of 2002 DC No 844 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EXTEMPORE ON:	6 November 2002
DELIVERED AT:	Brisbane
HEARING DATE:	6 November 2002
JUDGES:	McMurdo P, McPherson JA and Mullins J Separate reasons for judgment of each member of the court, each concurring as to the order made
ORDER:	**Application for leave to appeal against sentence refused**.
CATCHWORDS:	CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – CIRCUMSTANCES OF OFFENDER – where applicant convicted on own plea of one count of assault occasioning bodily harm – where applicant contends that, in the circumstances, a sentence requiring the recording of a conviction is manifestly excessive – where applicant studying law – where applicant has favourable antecedents – where serious aspects to offence – where application refused *Penalties and Sentences Act* 1992 (Qld), s 12 *Queensland Law Society Act* 1952 (Qld), s 41
COUNSEL:	T D Martin SC, with D R Kent, for the applicant B G Campbell for the respondent
SOLICITORS:	Hall Payne for the applicant Director of Public Prosecutions (Queensland) for the respondent

THE PRESIDENT: The applicant pleaded guilty in the District Court at Brisbane to one count of assault occasioning bodily harm. He was sentenced to imprisonment for a period of four months suspended forthwith with an operational period of 18 months.

The imposition of a suspended prison sentence means that a conviction is recorded. The applicant contends that in the circumstances it was manifestly excessive to impose this sentence which necessitated the recording of a conviction and that a fine with no conviction recorded should have been imposed instead.

The facts of the offence were as follows. At the time of the offence the applicant was a member of the Queensland Police Service and working as a police prosecutor in the Magistrates Court. The applicant and the complainant, a 22-year-old woman, were lining up at the bar to purchase drinks from the Transcontinental Hotel in Brisbane on Maundy Thursday 2000.

They did not know each other. The applicant touched the complainant on her shoulders and later her back and the top of her bottom. The complainant pushed the appellant away forcefully requiring him to take two steps backwards and verbally indicated her displeasure.

The applicant threatened to charge her with assault or hit her in self defence and the complainant retaliated with threats of a sexual harassment complaint. About 30 seconds later the applicant lent forward in front of the complainant to get some drinks. The complainant felt him pushing against her. She turned around and again asked him to go away in clear and unambiguous terms, pushing him again. He again took two steps backwards. He again pushed her, this time to the shoulder, causing her to fall onto a female friend. Once more she pushed him away. Within five seconds of this last push, whilst holding a glass he struck her on the side of her face causing an injury to her cheek.

The applicant was sentenced on the basis that he did not deliberately strike the complainant with glass but rather that he deliberately struck her whilst holding the glass. The glass did not break against her face.

The complainant suffered pain and has been left with scarring. Her injuries were medically described as a minor laceration and bruising and swelling around the left side tempora mandibular joint. The one centimetre laceration was cleaned and steri-strips applied. A photograph of the injury was tendered at sentence.

The offences had a significant deleterious and continuing impact on the complainant two and a half years after the incident. She is reluctant to go out and has become depressed.

The applicant was 26 years of age at sentence and 24 at the time of the offence. He pleaded guilty. He had a sound academic record and a good work history including work in the Queensland Police Service. He has been a volunteer in the Army Reserve, the Surf Life-Saving movement and police youth clubs. He has no previous convictions and his prior good character was attested to in a number of references, which included references from his current solicitor employers. By the time of the sentence he was an articled law clerk halfway through his studies with ambitions of admission as a solicitor. The applicant gave an undertaking at sentence to resign from the Queensland Police Service from which he had been suspended without pay after being committed for trial. He has lost his career in the Queensland Police Service because of this offence and, at least in the short term, has suffered a significant drop in salary. His counsel also emphasises that he has suffered from the public shame of committing this offence.

The applicant was originally charged with unlawful wounding. The complainant was cross-examined at committal. He was committed for trial on a more serious offence. The prosecution agreed to accept his plea of guilty to this offence shortly before the sentence.

The applicant contends that his Honour erred first in concluding that there was a break in time before the complainant last pushed the applicant and the applicant's response and, second, in concluding that the glass held by the applicant made contact with the complainant.

Counsel for the applicant at sentence emphasised that the plea of guilty was based on the striking of the hand whilst there was a glass in it, causing injury. This is not inconsistent

with his Honour's statement that the glass held by the applicant made contact with the complainant causing injury especially in the light of the photographs tendered at sentence. It was not the case at sentence that the glass did not touch the complainant but rather that it did not break in so doing and was not deliberately launched at her. His Honour fully appreciated this, as is clear from his sentencing remarks. It matters not in the end whether the injury was caused by the hand itself or the glass held by the hand. The serious aspect of this offence is that the applicant struck at the complainant whilst holding a glass and the potential for serious injury because of this act.

Nor is his Honour's statement as to the short time difference between the complainant's last push and the applicant's reaction causing the injury inconsistent with the facts placed before him on the applicant's behalf at sentence which his Honour earlier recited. His Honour did not err in sentencing on the basis that about five seconds after the complainant last pushed the applicant away, he deliberately struck her whilst holding a glass and that she was injured as a result. The expression used by his Honour "about five seconds" instead of the term used by counsel at sentence "within five seconds" is not significant here and nothing turns on that difference. His Honour was simply making the distinction between a reflex reaction and a reaction seconds later.

Penalties and Sentences Act 1992 (Qld) section 12 gives the Court a wide discretion as to whether or not to record a conviction. It requires the Court to have regard to all the circumstances of the case including the nature of the offence, the offender's character and age and the impact that recording a conviction will have on the offender's economic and social well being or chances of finding employment.

The applicant's prior favourable antecedents, promising prospects, his early plea of guilty, his remorse and his offer of compensation are matters favourable to him. A conviction may affect his prospects of admission as a solicitor although does not necessarily preclude it. See *Queensland Law Society Act* 1952 (Qld) section 41. The applicant's character and, to a lesser extent, his age and the impact that recording a conviction will have on his future prospects tend to support a sentence which does not record a conviction.

On the other hand there were serious aspects as to the nature of the offence. Although the sentence proceeded on the basis that the glass was not used as a weapon, the applicant deliberately struck the complainant whilst he was holding a glass in his hand and as a result she has suffered an injury which has scarred her face and which has caused her much unhappiness. It is self evident that to strike another whilst holding a glass, particularly in a crowded hotel where people can be expected to be affected to some extent by alcohol can lead to significant injury. It is fortunate here that the complainant was not more seriously injured.

Sentencing for such conduct must be sufficiently condign as to be a deterrent. The maximum penalty for this offence has recently been increased to seven years. The recording of a conviction does not preclude the applicant from a career as a lawyer but it will require him to persuade the admitting authorities and perhaps the Court that he is indeed a fit and proper person to practise in the profession of the law. In the circumstances, that is entirely appropriate. I am not persuaded that his Honour in his careful and detailed reasons failed to properly take into account the mitigating factors or otherwise erred in the exercise of his discretion to impose a fully suspended sentence which necessitated the recording of a conviction.

Comparable cases to which we have been referred, many of which preceded the increase in the maximum penalty, indicate that other non custodial options may also have been within the proper sentencing range here, but the sentence imposed was by no means manifestly excessive. I would refuse the application for leave to appeal against sentence.

McPHERSON JA: I agree.

MULLINS J: I agree.

THE PRESIDENT: That is the order of the Court.
