SUPREME COURT OF QUEENSLAND

CITATION:	*R v Layfield* [2003] QCA 3
PARTIES:	**R** v **LAYFIELD, Carl Vincent** (applicant)
FILE NO/S:	CA No 271 of 2002 DC No 226 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Ipswich
DELIVERED EX TEMPORE ON:	29 January 2003
DELIVERED AT:	Brisbane
HEARING DATE:	29 January 2003
JUDGES:	McPherson and Davies JJA 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 - JUDGMENT AND PUNISHMENT - SENTENCE - FACTORS TO BE TAKEN INTO ACCOUNT - where applicant convicted of stalking with a circumstance of aggravation - where applicant sentenced to two years imprisonment - where unlikely that applicant would re-offend - where applicant showed lack of remorse - whether trial judge should have suspended applicant's sentence after 12 months
COUNSEL:	P J Callaghan for applicant C W Heaton for respondent
SOLICITORS:	Legal Aid Queensland for applicant Director of Public Prosecutions (Queensland) for respondent

DAVIES JA: On 8 August 2002 the applicant was convicted of stalking with a circumstance of aggravation, namely that for a number of the concerning acts he unlawfully threatened to use unlawful violence against the complainant. The concerning acts took place between 30 June 2001 and 10 February 2002.

The applicant was sentenced, on the same day on which he was convicted, to two years imprisonment. He seeks leave to appeal against that sentence.

The complainant is the former fiancée of the applicant. They commenced associating together in 1993 and a child was born of their relationship on 14 August 1994. It died a few weeks after its birth and was cremated on 3 October 1994. The relationship deteriorated thereafter and the parties separated in mid-1999. However, after separation they continued to meet from time to time and these meetings occasionally resulted in sexual contact. Indeed, notwithstanding a domestic violence order obtained by the complainant in September 1999, the parties continued to meet but the relationship deteriorated further and was terminated by the complainant in October 2000.

Most of the concerning acts were comprised of telephone calls to the complainant, some of which contained threats of serious violence. Others consisted of following her and loitering outside her place of work. It was plain from some of the telephone conversations that the applicant had kept the complainant under surveillance. The threats to the complainant included threats to shoot her and to strangle her.

The applicant does not complain about the sentence of two years imprisonment. His complaint is encapsulated in the following statement contained in the outline of submissions of the applicant:

"His Honour the learned sentencing judge erred when he failed to consider, and then exercise, the option of suspending the applicant's sentence after a period of 12 months."

The reason, it is submitted by Mr Callaghan, that his Honour should have exercised this option is his finding that the applicant was unlikely to re-offend. It was submitted that there was ample evidence to support that finding, namely the applicant's youth, absence of previous convictions and support from family and friends. Also, as his Honour pointed out, there had been no attempt by the applicant to contact the complainant whilst he was in custody. It was submitted that in those circumstances there was really no purpose to be served by keeping him incarcerated for more than a year.

This submission was not put to the learned sentencing judge, as Mr Callaghan rightly conceded, indeed on the contrary the sentence imposed by the learned sentencing judge was that sought on the applicant's behalf.

On the other hand it was submitted by Mr Callaghan, nevertheless, that there was utility in suspending the sentence in the way contended for in that it would reinforce the restraining order which had also been made by the learned sentencing judge against the applicant because knowing contravention of the order would activate the suspended sentence.

No doubt it is true that the learned sentencing judge could have quite properly imposed the sentence now contended for. On the other hand his failure to do so does not, in my opinion, demonstrate any error. The applicant was convicted after a trial and, notwithstanding the apparently strong case against him, sought to demonstrate that it was false and, through his counsel, accused the complainant of deliberately falsifying a case against him.

This lack of remorse for his irrational and harmful conduct gives some cause for concern. If he is to be released from custody before the expiration of the sentence imposed, it may be better that he is so released subject to the supervision of a parole officer. Moreover both of these questions, when he is to be released and on what terms, may be better decided after he has been observed and assessed.

In those circumstances I think that the learned sentencing judge was justified in imposing the sentence which he did. I would therefore refuse the application.

McPHERSON JA: I agree.

MULLINS J: I agree.

McPHERSON JA: The application is dismissed.

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McPHERSON JA: That order initialled by counsel will be the order of the Court of Appeal.
