SUPREME COURT OF QUEENSLAND

CITATION:	*R v AO; ex parte Attorney-General (Qld)* [2003] QCA 428
PARTIES:	**R** **v** **AO** (respondent) **EX PARTE ATTORNEY-GENERAL OF QUEENSLAND** (appellant)
FILE NO/S:	CA No 249 of 2003 DC 167 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Appeal by A-G (Qld)
ORIGINATING COURT:	District Court at Maroochydore
DELIVERED EX TEMPORE ON:	25 September 2003
DELIVERED AT:	Brisbane
HEARING DATE:	25 September 2003
JUDGES:	Davies and Jerrard JJA and Holmes J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal against sentence dismissed.**
CATCHWORDS:	CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – APPEAL AGAINST SENTENCE – APPEAL BY ATTORNEY-GENERAL OR OTHER CROWN LAW OFFICER – APPLICATIONS TO INCREASE SENTENCE – OFFENCES AGAINST THE PERSON – where respondent pleaded guilty to offence of grievous bodily harm – where respondent juvenile – where respondent sentenced to 12 months detention to be released after serving 50 per cent – where complainant and respondent in a relationship – where complainant wanted to end relationship – where respondent stabbed complainant in lower back – where knife left protruding from complainant's back – where respondent remorseful – where risk of respondent re-offending very low – whether sentence manifestly inadequate *R v L* [2002] QCA 517; CA No 295 of 2002, 29 November 2002, distinguished *R v J* [1995] QCA 526; CA No 398 of 1995, 28 November 1995, distinguished

COUNSEL:	P F Rutledge for appellant P J Callaghan for respondent
SOLICITORS:	Director of Public Prosecutions (Queensland) for appellant Legal Aid Queensland for respondent

DAVIES JA: The respondent pleaded guilty in the Children's Court on 1 May 2003 to the offence of grievous bodily harm with intent on 5 October 2002. On 30 June 2003 he was sentenced to 12 months detention to be released after serving 50 per cent of that sentence. The Attorney appeals against that sentence.

The respondent, who is 16, both at the time of the offence and at the time of sentence has a minor and unrelated criminal history. Apart from two isolated minor offences in October 2001, all were committed in April and May 2001 and involved breaking and entering, stealing or entering with intent. No conviction was recorded in respect of any of these offences, the most serious penalty imposed being six months probation which was imposed on 13 November 2001.

The subject offence arose out of his relationship with a girl of his own age with whom he had been in a relationship, involving frequent breakups and reconciliations, for about two years. The respondent, in speaking to a Family Services officer after the commission of this offence described the relationship or, in effect, his attitude to it as "too intense" and his feelings for the girl as being "unbelievably strong".

On Friday 4 October 2002 the complainant told the respondent that she wanted to end the relationship. He threatened suicide if she did. She relented and they attended a party together. After the party he took her home and they made arrangements to meet early the next morning. However, when he rang for her the next morning he found out, after making several phone calls, that she had spent the night at the house of his best friend. He accused her of cheating, then immediately rode his bike over to where she was staying.

When he arrived there she and he had an argument in the house. Then they went into the garage to talk and commenced arguing again. She told him that she wanted to break up. He became very upset and she, he said, was laughing at him. The complainant then went to go

back into the house. The respondent grabbed her arm tightly, hurting her and scaring her, she said. She told him that he was hurting her and pulled away running into the kitchen. The respondent yelled at her, "You're fucked." At this point, he later told a Family Services officer, he “lost his mind”.

He followed her, picked up a large knife, 29 centimetres in length, off the kitchen bench and stabbed her in the lower left back as she was running away from him. The knife was left protruding from her back.

When he saw what he had done he said he got “spooked” and “took off”. He went to a friend's house where he rang his family who took him to the police station where he handed himself in.

In the meantime the complainant was taken to hospital where, some hours later, the knife was surgically removed. It was found to have penetrated muscle adjacent to the fifth lumbar vertebra to a depth of nine centimetres. A doctor was of the opinion that severe force would have been required to cause the wound. This was confirmed by a youth who observed the attack who said that the respondent lunged at the complainant taking a large swing which appeared to generate a lot of force behind the knife.

The respondent's confession and interview by the police was followed by his solicitor's request for an ex officio indictment and there was an early plea. Moreover, there was evidence both from the Family Services officer and from a psychologist of the respondent's extreme remorsefulness.

From the complainant's victim impact statement and from a letter from the Department of Health with reference to the complainant's referral to a government therapist, it is plain that the complainant has understandably suffered severe emotional trauma from the respondent's attack on her. She has had flashbacks, anxiety and panic reactions to stimuli, depressed mood and impaired concentration, occupational impairment and cognitive distortion. She has even attempted suicide. For a time she also suffered physical disabilities.

There is no doubt, as Mr Rutledge has pointed out in this Court, that the extent of her disabilities, particularly her emotional disabilities, are a relevant factor in sentencing.

From the report of the psychologist who spoke to and tested the respondent, it emerges that in his opinion the risk assessment for reoffending by the respondent is very low. In every sense, the psychologist said, the respondent's presentation was the antithesis of the criminal personality. Indeed, the psychologist went on to say:

> "For some one who would average one such assessment a week, AO is the healthiest personality I have seen for some time."

The psychologist went on to say:

> "In relation to the incident outlined above, it is my professional opinion that AO found himself involved in a highly frustrating, non-reward situation. In this situation AO perceived he was severely provoked. It is my professional opinion that his actions were not premeditated, nor was there any planned intent to harm. His actions were spontaneous and in the heat of the moment."

There is no suggestion in this case that the respondent's act was other than spontaneous and committed under severe emotional stress. That is not to excuse it in any way, but it is necessary to understand in order to place it in the context of the appropriate sentencing pattern for offences of this kind. It is also necessary for that purpose to examine some comparative sentences. Mr Rutledge, for the appellant, took us to a number of sentences. Two of them, it seems to me, are reasonably close comparatively to this case.

The Attorney submits that this case comes closest in similarity to *R v L* [2002] QCA 517. That is also the case which the learned sentencing judge thought was closest to this, and with that I agree.

The applicant offender in that case was also a youth of 16 who pleaded guilty to the offence of doing grievous bodily harm with intent, the offence here. At about 10.30 pm, at a bus stop at Runcorn, when the complainant and some companions were waiting for a bus, a companion of the applicant’s attacked the complainant with a view apparently to obtaining his wallet. The complainant became engaged in a struggle with that person but broke free and he and his companions ran across the road to distance themselves from the offender's

group. They were pursued by the offender and others and the offender struck the complainant a number of times from behind with a machete which he was carrying. Bleeding profusely, the complainant managed to board a bus. The police were called and he was immediately taken to hospital. He had a 15 centimetre laceration to his upper chest that extended to the 11th rib and penetrated through the muscle tissue. He also had three superficial puncture wounds in his back, shoulder and arm.

The offender, in that case, admitted to carrying two machetes and striking the complainant several times with one of them. He was carrying the machetes, he said, in anticipation of a fight which was to have taken place later that night after a party. The offender, like the respondent here, had a minor criminal history related to property offences.

The offender in that case was sentenced to 12 months detention and his appeal against that sentence was refused by this Court. A reading of the reasons of the Court in that case indicates that the major factor which the Court thought justified that sentence was the need to deter and to express the community's repugnance to young persons going armed in public with sharp weapons and using them. Unlike this case the offender there went armed in public with the intention of using his dangerous machetes, although not for this purpose, and gratuitously attacked the complainant.

In one of the cases referred to in *R v L*, to which Mr Rutledge also referred, *R v J* [1995] QCA 526, a 13 year old offender was sentenced to 12 months detention to be released after serving six months after pleading guilty to one count of grievous bodily harm.

In that case also it appears that he drew a knife he was carrying and stabbed the complainant in the upper abdomen penetrating the right lung and right side of the heart. This occurred in the course of an ongoing argument between two groups of boys at school. In that case also, like *R v L*, but unlike this case, the offender went armed in public and used a knife with which he had armed himself. This Court again emphasised the need to deter such conduct.

Unlike those cases, this is not one in which the need to deter such conduct arises. Moreover, as I have already indicated, the opinion has been expressed in the presentence reports to

which I have referred, that the respondent will not need to be substantially deterred from engaging in similar conduct again.

In other respect, *R v L* had similarities to this case, strong family support, remorse and apparently good prospects of leading a crime free life in the future.

A comparison of this case with *R v L*, the correctness of which the Attorney does not question, makes it impossible, in my opinion, to contend that this sentence is manifestly inadequate. The conduct in this case, though similar in many respects, is different in two important but related respects. The respondent did not go armed. Consequently unlike the two cases to which I have referred, no inference could be drawn that he had in mind, in advance, the possibility of using a weapon at some stage. And though he intentionally inflicted this quite serious wound he did so in a distressed emotional state, unlike the gratuitous attack committed by L. In both of those respects, L's offence was more serious than the respondent's.

For those reasons, in my opinion, this appeal must be dismissed.

JERRARD JA: I agree.

HOLMES J: I agree.

DAVIES JA: The appeal is dismissed.