SUPREME COURT OF QUEENSLAND

CITATION:	*R v Fuller* [2004] QCA 248
PARTIES:	**R** v **FULLER, Leina** (applicant)
FILE NO/S:	CA No 200 of 2004 DC No 104 of 2004 DC No 168 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Ipswich
DELIVERED EX TEMPORE ON:	23 July 2004
DELIVERED AT:	Brisbane
HEARING DATE:	23 July 2004
JUDGES:	Davies JA, Mackenzie and Mullins JJ 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 dismissed**
CATCHWORDS:	CRIMINAL LAW - JURISDICTION, PRACTICE AND PROCEDURE - JUDGMENT AND PUNISHMENT - SENTENCE - FACTORS TO BE TAKEN INTO ACCOUNT - CIRCUMSTANCES OF OFFENCE - where the applicant pleaded guilty to eight offences; five of common assault and two of occasioning bodily harm in company - where the applicant was sentenced to 12 months imprisonment suspended after four months for an operational period of three years - where the applicant was the instigator of assaults which occurred at her daughter's school - where the applicant brought other people with her to the school who also committed assaults - whether the sentence imposed in the circumstances was manifestly excessive
COUNSEL:	K A Mellifont for applicant B G Campbell for respondent
SOLICITORS:	Legal Aid Queensland for applicant Director of Public Prosecutions (Queensland) for respondent

DAVIES JA: The applicant pleaded guilty in the District Court on 25 June last to eight offences, seven committed on 18 March 2003 and one on 10 September 2003. Of the offences committed on 18 March 2003 five were of common assault and two were of assault occasioning bodily harm in company. The offence committed on 10 September 2003 was of assault occasioning bodily harm in company.

The applicant was sentenced in respect of the offences committed on 18 March 2003 as follows. On each of the five counts of common assault she was sentenced to three months imprisonment and on each of the two counts of assault occasioning bodily harm in company she was sentenced to 12 months imprisonment suspended after four months for an operational period of three years.

For the offence occasioning bodily harm on 10 September 2003 the applicant was sentenced to 12 months imprisonment suspended after four months for an operational period of three years. All sentences were to be served concurrently.

The applicant seeks leave to appeal against all sentences. In short, her counsel Ms Mellifont submits that all sentences should have been wholly suspended.

All of the offences committed on 18 March 2003 arose out of the same incident. Prior to that date the applicant had made

a complaint to the school where her 14 year old daughter attended of bullying of her daughter by other students.

On the day in question the daughter rang the applicant from the school crying and saying that a boy had hit her. The applicant went to her mother's home and picked up her sister Samantha Vaughan and her brother's girlfriend Tiffany Levitt and with them proceeded to the school. They arrived there at about midday. They met the daughter outside the school and walked into the school grounds together.

The daughter pointed out another girl and said that she was the one who had been picking on her. The girl concerned was with two other girls who then approached a teacher telling her that they thought the three adults who had entered the school were after them.

The woman teacher then approached the applicant and her companions and asked them to go to the school office. The applicant said she did not want to go to the office because the school did not do anything about it, referring to the alleged bullying. Samantha Vaughan then ran towards the girl whom the applicant's daughter had pointed out who then commenced to run away. However Vaughan grabbed her around the throat and squeezed her throat tightly. The girl said she thought she was going to faint. She managed to struggle free from Vaughan and ran towards the steps of the school. Either Vaughan or Levitt grabbed the girl's hair and pulled her backwards.

One of the girl's companions was also trying to get up the steps to get away from the offenders when Vaughan pushed her. A teacher commenced to follow these girls up the stairs when she felt someone hit her in the back of the head. She said she did not see who hit her on the head. However another teacher said he saw the applicant push the complainant teacher. The female teacher and the two girls managed to get to the staff room of the school.

There the female teacher told two male teachers that there were intruders in the school and asked them to go downstairs. They did so and one of the male teachers approached the three offenders and asked them to go to the office. The applicant started yelling at the teacher saying he could not tell them what to do or make them go. She then pushed him twice in the chest. She went to push him a third time and he put his hand up to stop her and, in fact, pushed her. She started hitting him in the face, Vaughan and Levitt then joining in the attack on him. He said he felt someone scratching his back. He did not retaliate but just put his hand up to protect himself.

Another male teacher tried to pull the applicant away from the man whom she was attacking and a woman teacher attempted to pull Levitt away from him. Levitt then hit the female teacher in the face whereupon a male student tackled her to the ground to stop her from assaulting again. When he stood up Levitt slapped him across the face.

The male teacher who had been attacked by the applicant had a cut above his right eye which required hospital attention, some bruising around the eyes and on the right side of his head and some bruising and scratch marks on his left shoulder. He also complained of ringing in his ears after the assault. The young student who had been hit by Levitt received a scratch to his face which bled.

The three offenders then started walking towards the office. Some of the teachers followed them. An administrative officer approached but backed away when Vaughan and Levitt started shouting at him. When they reached the office the applicant started shouting at the Principal pointing her finger at the Principal and poking her in the forehead a number of times. All three offenders then left saying that they were going away and would come back with reinforcements. Some time later they did return with a group of men. However, by this time the police had arrived.

Each of the offenders was later interviewed by the police. Each gave a version which was at least in some respects inconsistent with the others and inconsistent with the version I have just set out. However, on the sentence hearing it was not contended on the applicant's behalf that the version which I have set out was incorrect.

On that version, it appears that the applicant was the instigator of the event. She enlisted Vaughan and Levitt to go to the school with her to confront the student or students

whom her daughter had said had been bullying her. However, once at the school Vaughan appears to have been the major aggressor. It was she who first ran over and assaulted the girl student by squeezing her throat and then pulling her backwards by the hair. She then pushed another student, and while it was the applicant who attacked the male teacher first Vaughan and Levitt joined in the attack.

The events the subject of the offence of assault occasioning bodily harm in company on 10 September 2003 were as follows. On that afternoon two female students were leaving the school on their way home. They parted, one of them going towards her mother's car, the other to a bus stop. As the first of them proceeded to her mother's car she noticed that the applicant and her other sister May Lillian Vaughan were approaching her. They did so and asked the girl her name. When she answered the applicant started yelling at her accusing her of picking on the applicant's daughter.

The girl's mother who was present by this time stood between the applicant and her daughter and told the applicant to go away. The applicant continued to yell at the girl. The girl's mother then asked for the applicant's daughter to come over so that she could have her daughter apologise for whatever she had done. The applicant's daughter got out of the car but at this point Vaughan stepped out from standing behind the applicant and punched the girl in the face. The girl lost her balance and fell backwards. Nevertheless she later apologised to the applicant's daughter and the

applicant, her sister and her daughter then left. Unsurprisingly, the applicant was not charged with this offence. Vaughan pleaded guilty to it.

By this time, the other girl had walked to the bus stop with some friends. They were there for about 10 minutes when they saw the applicant's car and the girl recognised Vaughan. The car then came to a halt near the bus stop. Vaughan got out and approached the girl. She asked her why she had been calling Vaughan's niece names. The girl denied that she had done so.

Vaughan then called for the applicant's daughter to get out of the car and the applicant's daughter then confronted the girl about calling her names. Again the girl denied doing so. Vaughan then hit the girl in the mouth three times. The girl was sitting down and trying to protect herself with her hands. She ended up with a swollen and split lip. It was at this point that the applicant and another person alighted from the car and pulled Vaughan away. This was the assault on this day to which the applicant pleaded guilty.

It is true that Vaughan was the principal aggressor in this offence. On the other hand, it is plain from what occurred before and at the time that the applicant had enlisted her sister and another person to assist her in confronting each of these girls and it was pursuant to that purpose that the assault was committed. In other words, the applicant drove to the position where she did for the purpose of confronting the

girl in circumstances where she knew from the previous occasion that the girl might be assaulted.

In respect of the events of 18 March 2003, Samantha Vaughan, who was 19 years of age at the time, was sentenced to nine months imprisonment wholly suspended. She had a substantially less serious criminal history than the applicant having been convicted only in September 2003 of unauthorised dealing in shop goods for which she was fined and, in October 2003, for breach of a probation order.

The applicant who was 37 years of age at the time of the offence has a quite substantial criminal history of violent conduct. In 1985, she was convicted of resisting police, using obscene language and unlawfully taking shop goods away for which she was fined. In 1986, she was convicted of aggravated assault on a female and wilful and unlawful damage to property for which she was fined. In the same year, she was convicted of using obscene language and assaulting and resisting police for which she was fined and again in that year she was convicted of possession of a prohibited plant and fined. In 1987, she was convicted on three counts of stealing and four of false pretences for which she was sentenced to three months' imprisonment to be followed by probation for three years. In 1990, she was convicted of receiving and fined.

It is true that the Prosecutor described Samantha Vaughan's conduct as equal if not more serious in terms of violence and

that is an accurate description but she was substantially younger than the applicant and was plainly enlisted by the applicant for the purpose of going into the school yard to confront students in the way in which they did.

Moreover, the whole venture of which the applicant was the prime mover and her threat at the end which she carried out to return with reinforcements showed the seriousness of the applicant's conduct which the learned sentencing judge described as an invasion of the sanctity of the school environment for the purpose of inflicting some retribution on students for alleged bullying.

If his Honour's statement that the applicant's purpose of going there was to inflict retribution was an overstatement it is plainly true that she went there with others to confront students whom she thought had bullied her daughter knowing that the confrontation sought would be physical.

For all of these reasons it was appropriate, in my opinion, for the learned sentencing judge to differentiate in sentencing between the overall conduct of the applicant and that of Samantha Vaughan and to impose a lesser sentence on the latter.

May Lillian Vaughan was the applicant's even younger sister. She was only 17 years of age when she was enlisted by the applicant to take part in the events of 10 September 2003. She had a minor and insignificant criminal history. Again the

events of that day were controlled and co-ordinated by the applicant. Her responsibility for the second of the assaults by May Vaughan is an additional reason for justifying a substantially higher sentence to be imposed on her than that which was imposed on Samantha Vaughan.

In making her submissions to this Court, Ms Mellifont concedes that the sentence of 12 months imprisonment was within range but submits that it should have been wholly suspended.

In view of the applicant's previous criminal history and the seriousness of the offences as I have outlined them the sentence of 12 months imprisonment was, in my opinion, plainly within range. Indeed, a higher sentence could, in my opinion, have been imposed.

In the applicant's favour were her plea of guilty and it was submitted the fact that she was the sole carer of four children, two of whom have attention deficit hypertension disorder. However, this Court has said on a number of occasions that the effect of sentencing upon third parties including children, unfortunate though that may be, should not generally be taken into account in sentencing. Though the consequences of the applicant going to gaol are extremely unfortunate for her children I do not think that the facts which I have related justify the complete suspension of the sentence imposed. The offences, in my opinion, are far too serious for that.

One other matter was relied on in the written outline. This was a mistake by his Honour in describing May Lillian Vaughan as the applicant's daughter rather than as her sister. However, in my opinion, that was a slip which made no difference to the sentence imposed.

It follows from what I have said that there were no personal factors of the applicant's which should have required the learned sentencing judge to wholly suspend the sentence which he imposed. In my opinion, the sentence as a whole was not outside the range of a sound discretionary judgment and I would therefore dismiss the application.

MACKENZIE J: I agree that the application should be refused. For myself, I would only add that it would be out of touch with reality to think that instances of bullying do not occur in school communities. However, in an era where the emphasis is on non-violent resolution of disciplinary issues in schools, but, according to the media, outbreaks of parental rage are not uncommon, the notion that parents and relatives may go in numbers to the school to confront those who have given them offence or to try to exact summary retribution for things that should be dealt with through official procedures or other legitimate means of achieving remedial action, of which non-violent attraction of publicity may be one, cannot be condoned or encouraged.

This case involved the applicant being a party to offences of assault, some occasioning bodily harm, on students at school

and on the way home and on teachers trying to protect them and prevent further violence. In some case, painful injuries were caused. Understandably, the incident caused stress that was not merely transient to some victims. The applicant was 37 and must have known that the behaviour she engaged in was totally unacceptable.

In my view, given the level of violence and its relatively protracted duration on the occasion at the school and the repetition of an attempt to exact summary redress on the second occasion six months later, a sentence involving a short period of actual custody was not manifestly excessive.

MULLINS J: I also agree.

DAVIES JA: The order is as I have indicated.
