

COURT OF APPEAL

**MARGARET McMURDO P
NORTH J
HENRY J**

**CA No 316 of 2011
DC No 319 of 2011**

THE QUEEN

v

JOHNSON, Lorna Roseanne

Applicant

TOWNSVILLE

DATE 13/05/2012

MARGARET McMURDO P: The applicant, Lorna Roseanne Johnson, pleaded guilty on 28 September 2011 to unlawfully doing grievous bodily harm to her then partner, on 8 July 2009. She was sentenced to four years imprisonment, with parole eligibility on 27 January 2013; that is, after serving one-third of the sentence. Ms Johnson, who is now self-represented, applies for leave to appeal against her sentence, contending it is manifestly excessive.

In her written outline of argument she emphasised that her 12 year relationship with the complainant was a violent one. It began when they were both 17. In her oral submissions she said they met when they were only 14. She submitted that he had stabbed her in 2008 in Manuka in Canberra and on another occasion in Reid in Canberra he choked her. She submitted that he had also sexually abused her in Griffith in Canberra in 2008 and had twice passed on to her sexually transmitted diseases. On the present occasion he tore her clothes from her body. She told her lawyers that the complainant had a history of mental illness and drug and alcohol abuse arising out of his sexual abuse in Germany. She claimed that he sold

illegal drugs in the past and he had asked those who owed money to him to beat her. In her oral submissions she stated that he was never charged in respect of any of these matters.

She also emphasised that she had committed no offences between 2000 and 2009, when this offence occurred, and had no convictions since. She stated that she herself was sexually abused as a child. She had worked hard over the years to rehabilitate herself, especially since being charged with these offences. She had attended eight counselling sessions in Townsville when she was on bail.

She submitted that her sentence was excessive when compared to others, but she was unable to provide this Court with any decisions of this or other Courts to support that submission. She stated that she was relying on anecdotal reports from other women in prison. She stated that after this offence occurred she had suffered further punishment by losing all her possessions and that the complainant had left her with significant storage bills.

In her written submissions she expressed her remorse for injuring the complainant. She emphasised that she did not mean to hurt him. She conceded that she should not have grabbed a knife, but emphasised that he was attacking her. She stated that she had learnt from her mistakes and was determined not to participate in abusive relationships in the future. She has positive future plans. She wants to study for a degree in Information Technology and hopes to find a suitable partner and start a family. She has asked this Court for a shorter head sentence and an earlier parole eligibility date, preferably a fixed release date.

The applicant was 29 at the time of the offence, and 31 at sentence. She had a relevant and concerning criminal history in the ACT. In 2000 in the ACT Supreme Court she was sentenced to nine months imprisonment, suspended forthwith on entering into a two year good behaviour bond, with a direction she receive counselling for drug and alcohol abuse and anger management, for the offence of assault occasioning bodily harm. She was also ordered to perform 104 hours community service for attempted theft. In 2002 she was convicted in

the ACT Magistrates Court and sentenced to nine months imprisonment, to be served by way of 36 periodic detentions for the offence of assault occasioning bodily harm committed in June 2001. Later that year in the ACT Supreme Court she was convicted and released on a good behaviour bond for an earlier offence of assault occasioning bodily harm.

The circumstances of these offences were not before the primary Court or this Court. But the penalties imposed on a young offender without a significant criminal history suggest they were concerning acts of violence.

A schedule of facts was tendered at her sentence without objection. The facts detailed in that schedule were as follows.

The complainant was the same age as the applicant, born just a few weeks before. At the time of the offence they had lived together in an intermittent de facto relationship for 13 years. There was a history of domestic violence. The complainant was a soldier in the Australian Army and was stationed at Townsville. On 8 July 2009 he finished his duties at 4 pm and stayed at the barracks, drinking with three colleagues. He estimated that he consumed about six stubbies of beer and three or four cans of premixed spirits before having dinner at the barracks.

At about 9 pm his colleagues drove him home. He asked them to come inside so as to reassure the applicant that he had been with them that evening. The applicant, her mother and her brother were at home. After about 10 to 15 minutes, all the visitors left. The applicant yelled at the complainant, accusing him of sleeping with her sister. He attempted to placate her, without success. He had a shower, but their argument continued when he returned. The applicant said, "If you fuck around with me or my family I'm going to fucking kill you." He replied, "Be rational and think about what you're saying. You're accusing your little sister of sleeping with me. You know your sister better than anyone and know she wouldn't do that." He picked up a soccer ball and head butted it into the backyard. She said, "Don't do that." He replied, "Don't tell me what to do."

He went to the kitchen fridge for a drink of water. He looked up and saw the applicant with a knife in her hand. He immediately turned and ran around the kitchen counter. She raised the knife and made hacking motions up and down. She chased the complainant around the kitchen at least twice. When he stopped she stabbed him to the right side of his neck. He felt a sharp, burning sensation and said, "What did you just do?" She said, "Give me a look." He showed her the wound. She immediately became hysterical.

He tried to run for the front door, however she reached the front door and would not allow him to leave. She said, "No, you're not getting out. Go sit down", and pushed him against the wall. He slid to the floor. She grabbed a towel and applied pressure to the wound. She called Triple O and told the operator that she had stabbed the complainant.

Two neighbours, concerned about the disturbance, arrived to assist. One heard the applicant say, "I have stabbed my husband. Oh, God, someone please help me." The applicant was still on the phone with the Triple O operator and said words to the effect of, "I stabbed my husband. We were having a fight and I have stabbed my husband accidentally. I was holding a knife and he walked into the knife."

The complainant lost consciousness. Police and ambulance arrived soon after and transported him to the Townsville Hospital, where he underwent emergency surgery. The applicant was arrested at the scene. When asked where the knife was she pointed to the kitchen bench. She declined to participate in a record of interview with police.

The prosecutor stated that, if left untreated, the complainant's injuries would have endangered his life. He tendered medical reports to the following effect. The knife wound caused damage to the long thoracic nerve as it transits through the neck. The nerve supplies the serratus anterior and lower trapezius muscles. These muscles first appeared to be paralysed. Upon attempting to elevate the arm, gross scapula winging occurred due to the paralysis of the serratus and trapezius muscles. When examined two years later the complainant had made

good progress. He had been medically upgraded by the military, with restrictions for work involving the use of his right arm. When he attempted to elevate his arm, some scapula dysfunction was still apparent, but he could get his arm above his head to an angle of 150 degrees. He was, however, unable to support any weight with the arm during elevation. He was not expected to improve further and his disability appears permanent. He has received psychological treatment and counselling.

The complainant's victim impact statement dated 22 September 2011, shortly before the sentencing, described his injuries resulting from the offence as physically and mentally ruining his life over the past two years. His career in the Army had come to a standstill and was jeopardised. He had started a new personal relationship, but it has been compromised by his lack of trust and his psychological problems arising from this offence.

The applicant was herself medically examined the day after the offence. She had no visible marks or injuries, and no alcohol or drugs were detected in the body samples taken from her.

The prosecutor at sentence stressed that the applicant's conduct was unprovoked by the complainant. Relying on *R v Johnston* [2004] QCA 12, and *R v Goldberg*, unreported District Court Maroochydore 6 June 2011, the prosecutor submitted that the need for personal and general deterrence warranted a sentence of at least five years imprisonment, with parole eligibility at one-third.

Defence counsel at sentence made the following submissions. The applicant was of Aboriginal and German heritage; she had had a dysfunctional upbringing, marked by alcohol-fuelled violence and sexual abuse. She now recognised she had resulting significant emotional issues and had abused alcohol and drugs. Since June 2011 she had been receiving counselling through Spiritus and Relationships Australia. She had joined the Hillsong Church. She was sorry for her actions and had found a new direction in life.

Whilst she was in the watch-house on 9 July 2009 she was assessed by a Court Liaison Officer for the Community Forensic Mental Health Service, Mr Chong. Mr Chong noted evidence of depressive symptoms, with resulting diminished impulse control. She had no suicidal or homicidal intent. She did not appear to be under the influence of liquor or drugs. Her judgment was not currently impaired. She did not fit the criteria for involuntariness.

Defence counsel submitted that once negotiations as to the plea had successfully concluded the applicant pleaded guilty in a timely way. Whilst the complainant's injuries were serious, her counsel submitted, they were not as bad as some, for instance, brain injuries. The argument occurred in the kitchen; she did not go there to get the weapon. The case of *Johnston* involved much more serious injuries. The appropriate penalty, her counsel submitted, was four years imprisonment, by inference with parole eligibility after one-third.

In sentencing the applicant, the Judge made the following observations. The guilty plea was a timely one. The complainant's injuries were serious and permanent. The applicant did not go to the kitchen to fetch the knife; the incident occurred in the kitchen where she was chasing the complainant with the knife, stabbing him when he stopped. She had prior offences for personal violence. The case was not as serious as *Johnston* or *Goldberg* but offences like this involving knives required a deterrent sentence. She had a dysfunctional background and was trying to rehabilitate. A significant custodial sentence was required, namely four years. Parole would be of benefit to her on release.

In considering this application it is immediately obvious that the sentence imposed accorded with that requested by the applicant's counsel. This makes the applicant's task in demonstrating that the sentence was manifestly excessive especially difficult. See *R v Frame* [2009] QCA 9, [5]–[6], and *R v Matauaina* [2011] QCA 344, [13].

The applicant was represented by experienced counsel who seemed to have made competent, relevant and comprehensive submissions on her behalf. It is clear that, after negotiations with

the prosecution as to the appropriate offence, the applicant pleaded guilty to the agreed charge, apparently on the basis of the agreed schedule of facts. Her detailed assertions of the complainant's provocation and long term abuse of her, which she placed before this Court without supporting evidence, were not before the sentencing Judge. In those circumstances, this Court can place no reliance on those assertions. I note, however, that the agreed schedule of facts did state that their relationship was a physically abusive one. There is no reason to conclude that the Judge did not sentence her on that basis.

The cases of *Johnston* and *Goldberg* were, as the primary Judge recognised, even more serious than this. They are of limited assistance in establishing the sentencing range in this case, other than to show that a lesser sentence was appropriate here. The facts of cases of this kind are so infinitely variable that it is always difficult, if not impossible, to find precisely comparable cases. Neither *Johnston* nor *Goldberg* nor *R v Henriott* [2004] QCA 346 suggest that the present sentence, although perhaps at the higher end of the range, was outside the appropriate range in all the circumstances. The use of a knife in domestic arguments, when one or both partners are affected by alcohol, can and all too frequently does, result in tragedy. The complainant here could easily have been killed. He has suffered a serious and permanent physical injury, and consequential psychological problems which have affected both his professional and personal life.

The applicant's timely guilty plea, her dysfunctional background, including her dysfunctional relationship with the complainant, and her rehabilitation efforts since the offence, were accepted by the Judge and taken into account by the early parole eligibility date. The sentence imposed was within range.

The applicant has not demonstrated any error on the part of the sentencing Judge. For these reasons the application for leave to appeal against sentence must be refused.

NORTH J: I agree with the reasons and the orders proposed. I have nothing to add.

HENRY J: I also agree.

MARGARET McMURDO P: So your application is refused. My colleagues support what I'm about to say to you. You are obviously a very capable person with a lot of talent and ability. You've presented your case very articulately. You obviously have a good future when you get this behind you. You do need, because of the problems you've had in the past and the difficulty you've had in coming to terms with them despite the assistance you've had, some support. But you are mature now. You are showing some insight. You should benefit from parole. You should really channel your energies now into ensuring you are released on parole as soon as possible after your parole eligibility date.

APPLICANT: Mmm.

MARGARET McMURDO P And when that happens, with the support of the parole system, you've got a good future. We wish you well.

APPLICANT: Thank you.