# SUPREME COURT OF QUEENSLAND

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| CITATION: | *R v Compton* [2017] QCA 55 |
| PARTIES: | **R**<br>**v**<br>**COMPTON, William John Noel**<br>(applicant) |
| FILE NO/S: | CA No 143 of 2016<br>DC No 1856 of 2016 |
| DIVISION: | Court of Appeal |
| PROCEEDING: | Sentence Application |
| ORIGINATING COURT: | District Court at Ipswich – Date of Sentence: 20 May 2016 |
| DELIVERED ON: | 4 April 2017 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 14 March 2017 |
| JUDGES: | Gotterson and McMurdo JJA and Flanagan J<br>Separate reasons for judgment of each member of the Court, each concurring as to the order made |
| ORDER: | **The application is refused.** |
| CATCHWORDS: | CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the respondent appeals against sentence – where the respondent pleaded guilty to one count of malicious act with intent (domestic violence offence) – where the respondent sentenced to seven years' imprisonment with a parole eligibility date fixed at 1 December 2018 – where the respondent was subject to two suspended sentences at the time of the commission of the offence – where, at sentencing, defence counsel and the Crown agreed as to how the sentence should be structured – where the Crown proposed, and defence counsel accepted, a head sentence of seven years – where the sentence was structured in the context that both suspended sentences be activated – whether the sentence imposed was manifestly excessive<br><br>*Criminal Law (Domestic Violence) Amendment Act* 2015 (Qld), s 6<br>*Penalties and Sentences Act* 1992 (Qld), s 15<br><br>*Barbaro v The Queen* (2014) 253 CLR 58; [2014] HCA 2, considered |

*R v Amery* [2011] QCA 383, applied
*R v Cobb* [2016] QCA 333, considered
*R v Flew* [2008] QCA 290, cited
*R v Frame* [2009] QCA 9, cited
*R v Goodwin; ex parte Attorney-General (Qld)* (2014) 247 A Crim R 582; [2014] QCA 345, cited
*R v Holland* [2008] QCA 200, distinguished
*R v Lowe* [2001] QCA 270, considered
*R v Mitchell* [2006] QCA 240, distinguished
*R v Oakes* [2012] QCA 336, considered

COUNSEL: L D Reece for the applicant
C W Heaton QC for the respondent

SOLICITORS: Legal Aid Queensland for the applicant
Director of Public Prosecutions (Queensland) for the respondent

[1] **GOTTERSON JA:** I agree with the order proposed by Flanagan J and with the reasons given by his Honour.

[2] **McMURDO JA:** I agree with Flanagan J.

[3] **FLANAGAN J:** The applicant seeks leave to appeal against his sentence imposed in the District Court at Ipswich on 20 May 2016. The applicant was sentenced in relation to one count of malicious act with intent (domestic violence offence). The maximum penalty for this offence is life imprisonment. He was sentenced to seven years imprisonment with a parole eligibility date fixed at 1 December 2018. The structure of the sentence was complicated by the fact that at the date of the commission of the offence the applicant was subject to two suspended sentences imposed by the Brisbane Magistrates Court on 14 November 2013. There was also 240 days of pre-sentence custody to be taken into account which could not be declared.

[4] The sole ground identified in the application for leave to appeal is that the sentence imposed was manifestly excessive.

**The circumstances of the offending**

[5] The applicant and the complainant were in a relationship at the time of the offence. The applicant was 21 years of age and the complainant was 20 years. They were staying at the applicant's house, where he lived with family members at the time.

[6] In the course of the evening of 22 September 2015 the complainant accused the applicant of cheating on her after finding text messages on his phone. The applicant denied this but made similar accusations in respect of the complainant. The applicant attempted to access social media applications on the complainant's phone. She did not provide him with the passwords. They argued and the complainant eventually went to bed. She woke throughout the night and saw the applicant pacing around the bedroom with her phone.

[7] On the morning of 23 September 2015 the complainant woke because the applicant had punched her in her right eye. The applicant was in front of her jumping up and

down and repeating, "I'm gonna flog you. I'm gonna fucking flog you." The complainant wrapped herself in a blanket that was on the bed.

[8] The applicant walked over to a wooden cupboard and moved it so it was blocking the door to the bedroom. He removed a golf club, an iron, from the wardrobe and walked over to the complainant and started striking her with the golf club. The complainant described the applicant's action in striking her with the golf club as a "haymaker fashion", raising it above his head then down onto her body on at least five occasions. The complainant felt the club strike her on her right leg and upper body.

[9] The complainant was yelling for help and rolling from side to side, still wrapped in the blanket to avoid being struck.

[10] The applicant's mother tried to intervene but could not open the door. His mother threatened to call police and his uncle if the applicant did not desist in this behaviour. The applicant replied, "She's right mum". The applicant's mother left and the applicant resumed striking the complainant with the golf club. The applicant told the complainant to "shut up and stop screaming. You must want coppers to come."

[11] At this stage the applicant's uncle came to the door and told the applicant to stop. His uncle forced the bedroom door open and the applicant ran out.

[12] An ambulance was called and transported the complainant to the Princess Alexandra Hospital. The complainant suffered the following injuries:

(a) open fracture of the left forearm, with a 2mm medial displacement and soft tissue swelling;

(b) open fracture through the right fibular;

(c) posterolateral wound of the right arm;

(d) undisplaced fracture of the right transverse process of L2.

[13] The complainant had surgery that day and the fracture to her forearm was fixed with a plate. The right leg wound and right arm wound were each explored, irrigated and closed.

[14] It was the fracture to the complainant's forearm which constituted the grievous bodily harm.

**The applicant's antecedents**

[15] The applicant was 21 years of age at the time of the offence and at sentence.

[16] He has a lengthy criminal history comprised mostly of property and motor vehicle offences. There are two convictions for offences of violence, both committed as a juvenile. The first involved the applicant spitting in the face of the deputy principal of the school he was then attending. The second involved the applicant, whilst in company, punching a stranger in the head at a railway platform. He was sentenced to conditional release orders for those offences, with no convictions recorded.

[17] In 2012 he was placed on a 12 month intensive corrective order for traffic, dishonesty and drug offences. He breached that order and on 18 April 2013 in the Ipswich Magistrates Court was ordered to serve the balance. Prior to that resentencing, the applicant was dealt with in January and February of 2013, and was sentenced to terms of imprisonment for a number of offences of a similar nature. The effect of those orders was that he had an effective sentence of two years, with a parole release date in June 2013.

[18] In November 2013 he was dealt with in the Brisbane Magistrates Court for 10 offences committed over the course of two days in August 2013, two months after his release on parole. The sentence for offences of dangerous operation of a motor vehicle committed on 24 August 2013 was, by law, required to be served cumulatively upon his existing sentence. He was sentenced in the Brisbane Magistrates Court to 15 months' imprisonment, fully suspended with an operational period of 24 months. He was also sentenced to 33 months' imprisonment, suspended after serving 11 months for a number of other charges. The operational period of this suspended sentence was three years. As I have already observed, the applicant was still subject to the operational period for these two suspended sentences at the time of the commission of this offence. The balance of the suspended sentences imposed on 14 November 2013 were 15 and 22 months respectively.

[19] The applicant had a dysfunctional upbringing at Cherbourg where he was born. He attended secondary school to Grade 11. He has had employment with the Ipswich City Council doing horticultural work and has also worked as an apprentice mechanic. He has a three year old daughter. Defence counsel referred to the death of the applicant's father in 2006 and his teenage brother in 2010. Both were suicides. Defence counsel noted that the applicant had struggled to cope with the grief he felt as a result of these tragedies and had received some counselling for both that grief and his drug and alcohol issues. Defence counsel submitted that at the time of the subject offence the applicant had been drinking and smoking cannabis, and suggested that the combination of these substances had "probably poorly affected his judgment".[1]

**The sentencing proceedings**

[20] Before the learned sentencing judge both the Crown prosecutor and defence counsel agreed as to how the sentence should be structured. The Crown prosecutor by reference to *R v Oakes*[2] and *R v Amery*[3] submitted that an appropriate head sentence was seven years with no serious violent offence declaration. This head sentence of seven years was accepted by defence counsel.[4] The head sentence of seven years was recommended in the context that both suspended sentences should be activated, the balance of 15 months and 22 months under the suspended sentences should be served concurrently with each other, and concurrently with the head sentence.

[21] The Crown prosecutor submitted to the learned sentencing judge that the non-declarable 240 days should be taken into account by reducing the balance of the suspended sentence of 22 months to approximately 15 months. The Crown prosecutor submitted that taking into account the time the applicant had served in pre-sentence

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1 ARB 28, lines 38-40.
2 [2012] QCA 336.
3 [2011] QCA 383.
4 ARB 27, line 38.

custody, together with his youth and his plea of guilty, might ordinarily warrant a parole eligibility date after about two years and four months.[5] The parole eligibility date in these circumstances would be around 20 September 2018. As the balance of the suspended sentences were to be concurrent rather than cumulative with the head sentence, the Crown prosecutor recommended that the parole eligibility date should be extended to take into account that the offence was committed during the operational period of the suspended sentences. The extension of the parole eligibility date suggested by the Crown prosecutor was an additional five months, constituting a third of the balance of the suspended sentence after it had been reduced to account for pre-sentence custody. This would have resulted in a parole eligibility date of around 20 February 2019.

[22] Defence counsel expressly adopted not only the head sentence, but also the structure of the sentence, as submitted by the Crown prosecutor.[6] Defence counsel, however, submitted for a "more generous" parole eligibility date:

> "Ordinarily he – as my friend says – on a seven year sentence would get an eligibility for parole after two years and four months. Your Honour can extend that out a little and as your Honour said, well, what; give him a third of the 15 months that he owes because I'm giving him the allowance for the time he's taken in custody. I'm asking your Honour to be a little bit more generous and give him two years and six months for his parole eligibility. And that's based on his age."[7]

[23] If his Honour had accepted this submission, the parole eligibility date would have been fixed at around 20 November 2018.

[24] After describing the circumstances of the offence the learned sentencing judge noted the following:

(a) the applicant had probably hit the complainant six or eight times on the body with the golf club;

(b) it was an appalling act of violence;

(c) this was the fifteenth time that the applicant had appeared in a criminal court to plead guilty to criminal offences;

(d) his criminal offending had commenced when he was only 13 years of age;

(e) the offence was committed during the operational period of two suspended sentences of imprisonment;

(f) in hitting the complainant with a metal golf club on numerous occasions after she pleaded with the applicant to stop, he had showed no mercy;

(g) it was only after intervention by the applicant's mother and uncle that he desisted;

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5 ARB 26, lines 15-20.
6 ARB 28, lines 41-46.
7 ARB 29, lines 1-6.

(h) the applicant had a dysfunctional childhood at Cherbourg, including losing both his father and brother to suicide; and

(i) the applicant had used cannabis since his mid-teens and has also experimented with methylamphetamine.

[25] After referring to the decisions of the Court of Appeal in *R v Oakes* and *R v Amery* the learned sentencing judge considered a head sentence of seven years imprisonment as being appropriate. His Honour structured the sentence in accordance with the submissions of the Crown prosecutor and defence counsel. In doing so his Honour stated:

> "Taking account of the factors, the submissions made by your counsel and the Crown Prosecutor, and, of course, your pleas of guilty, which have saved the administration of justice the costs and expense of a trial, and has avoided the necessity of your partner from having to give evidence in Court …"[8]

[26] His Honour fixed the applicant's parole eligibility date at 1 December 2018. This was only 11 days more than the parole eligibility date submitted by defence counsel. It was approximately two months and 20 days less than the parole eligibility date submitted by the Crown prosecutor. In fixing the parole eligibility date at 1 December 2018 his Honour stated:

> "I take account of the period of 240 days that you've served, and I fix your parole eligibility as December 1, 2018. So I didn't quite give you the full benefit that Mr Seaholme suggested but I have given you a benefit there."[9]

**Consideration**

[27] As is apparent from the above discussion of the sentencing proceedings, the structure of the sentence by which the learned sentencing judge determined the head sentence and fixed the parole eligibility date was that largely urged by the applicant's own counsel. The difficulty that this presents to the present application is acknowledged by the applicant.[10]

[28] In *R v Flew*[11] Keane JA (as his Honour then was) identified the hurdle that an applicant for leave to appeal faces in such circumstances:

> "Next, it should be noted that the sentence imposed was in accordance with that proposed to the learned sentencing judge by the applicant's Counsel. While it is true that the imposition of a just sentence is the responsibility of the sentencing judge, appeals are available to correct errors on the part of the sentencing judge, not to provide a second hearing on sentence as if the first sentence were merely provisional. When an offender seeks leave to appeal against a sentence on the ground that the sentence is **manifestly** excessive, it must be recognised that the ground of the application is directly

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8 ARB 32, lines 41-45.
9 ARB 33, lines 13-19.
10 Outline of Submissions on behalf of the applicant, paragraph 7.3.
11 [2008] QCA 290 at [27].

> contradicted by the conduct of the applicant's case before the sentencing judge by which the applicant is bound."

[29] His Honour noted that where a sentence was imposed in accordance with the submission put to the sentencing judge on the offender's behalf, an assertion that the sentence imposed was manifestly excessive could be upheld only in circumstances which are sufficiently exceptional to warrant relieving the applicant from responsibility for the conduct of his case at first instance.

[30] This requirement for "exceptional circumstances" to warrant the conclusion that the applicant should not be regarded as bound by the conduct of his case in the court below was subsequently emphasised by Keane JA (with whom Muir and Fraser JJA agreed) in *R v Frame*.[12]

[31] The applicant submits, however, that the sentence imposed is so clearly out-of-step with the relevant authorities that this is a case in which the applicant should not be bound by the conduct of his case at first instance. This submission should not be accepted because the sentence imposed was not, in my view, manifestly excessive.

[32] The basis for the applicant's submission that the sentence was manifestly excessive is that the learned sentencing judge was not specifically referred to the statement of Keane JA in *R v Holland*[13] where his Honour observed:

> "[T]he range of sentence which might have been imposed in a case where grievous bodily harm has been deliberately inflicted by the use of a weapon by a mature offender with a record of personal violence is between four and seven years imprisonment."

[33] This passage has been subsequently referred to by Mullins J (with whom Fraser JA and Douglas J agreed) in one of the decisions to which the learned sentencing judge was referred, *R v Amery*.[14] Her Honour noted that the range suggested by Keane JA was referrable to the offending in the circumstances of that offence and the antecedents of that offender.

[34] In *Barbaro v The Queen*[15] the plurality (French CJ, Hayne, Kiefel and Bell JJ) stated:

> "[I]n seeking consistency sentencing judges must have regard to what has been done in other cases. Those other cases may well establish a range of sentences which have been imposed. But that history does not establish that the sentences which have been imposed mark the outer bounds of the permissible discretion. The history stands as a yardstick against which to examine a proposed sentence."

[35] In *R v Goodwin; ex parte Attorney-General (Qld)*[16] Fraser JA observed:

> "Comparable sentences assist in understanding how those factors should be treated, but they are not determinative of the outcome and they do not set a "range" of permissible sentences. Whether or not

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12 [2009] QCA 9 at [5] and [6].
13 [2008] QCA 200 at [63].
14 [2011] QCA 383 per Mullins J at [21].
15 (2014) 253 CLR 58, 74 at [41]; [2014] HCA 2.
16 [2014] QCA 345 at [5].

> a sentence is manifestly inadequate or manifestly excessive is not to be decided by reference to a predetermined range of available sentences but by reference to all of the factors relevant to sentence. Because sentencing involves a case-by-case synthesis in which past sentences may be used only as guidelines and are not determinative, there can be no underlying range of available sentences for a particular case which may be narrowed or broadened over time by subsequent sentencing decisions."

[36] The range suggested by Keane JA for these type of offences in *R v Holland* must now be considered in light of the High Court's subsequent decision in *Barbaro*. Counsel for the applicant, however, suggested that recent amendments to the *Penalties and Sentences Act* 1992 , which commenced prior to the applicant being sentenced, alters the approach to a range of sentences referred to in *Barbaro*. Section 6 of the *Criminal Law (Domestic Violence) Amendment Act* 2016 amended section 15 of the *Penalties and Sentences Act* 1992 to insert the words "or a sentencing submission made by a party to the proceedings". Section 6(3) of the amending Act defines "a sentencing submission" to mean a submission stating the sentence, or range of sentences, the party considers appropriate for the court to impose. Counsel referred to the Explanatory Notes to the *Criminal Law (Domestic Violence) Amendment Bill (No 2)* 2015 which states:

> "On 12 February 2014, in the judgement (sic) of *Barbaro & Zirilli v The Queen* [2014] HCA 2 (Barbaro), the High Court of Australia held that prosecutors were not permitted to make a submission to the court during a sentence hearing on the appropriate sentence, or the bounds of the range of appropriate sentences, to be imposed by the court. This decision led to significant change to the established and longstanding practice in Queensland which will be restored by the Bill."

[37] By reference to the amendment and the Explanatory Notes, counsel for the applicant submitted that the amendment:

> "has removed the constrictions placed on the idea of a range, both from the point of view of submissions made on sentence but also from the point of view of courts deciding cases, identifying a range, whether or not a case falls within a range, outside a range."[17]

[38] The applicant seeks to establish by reference to *R v Holland* and the decisions referred to by Keane JA in arriving at a suggested range, namely *R v Mitchell*[18] and *R v Lowe*,[19] (when compared to the two cases to which the learned sentencing judge was referred),[20] that the sentence was manifestly excessive. This is not the proper approach and the amendment to section 15 of the *Penalties and Sentences Act* 1992 does not affect the proper approach.

[39] Philip McMurdo JA dealt with a similar submission in *R v Cobb*.[21] In that case his Honour observed that a decision of an appellate court does not establish even the

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17 Transcript, Court of Appeal, 1-10, lines 5-8.
18 [2006] QCA 240.
19 [2001] QCA 270.
20 *R v Oakes* [2012] QCA 336 and *R v Amery* [2011] QCA 383.
21 [2016] QCA 333.

range of sentences for the particular case which it is deciding. The appellate court must consider whether the sentence is inside a range within which the discretionary judgment of the sentencing judge could be properly exercised. As noted by his Honour, however, this is not a range for which upper and lower limits are to be quantified by the appellate court.[22] His Honour then quoted paragraphs [27] and [28] of *Barbaro* and continued:

> "The authority of *Barbaro* in these respects is unaffected by the recent amendment to s 15 of the *Penalties and Sentences Act* 1992 (Qld), which permits a sentencing court to receive submissions which state the sentence, or range of sentences, the party considers appropriate for the court to impose. This provision removes the impediment, according to *Barbaro*, of the proffering of an opinion of the prosecution as to the appropriate outcome. It does not affect the authority of *Barbaro* upon the proper use to be made by courts of comparable sentences."[23] (footnotes omitted)

[40] Even by reference to the cases identified by the appellant the sentence, as structured by the learned sentencing judge, is not manifestly excessive.

[41] In *R v Holland* the complainant's jaw was broken and required surgical reparation. He had been left with a loss of sensation in his lower lip and lower jaw area. The sentence was imposed after a trial. The Crown case was that the injuries were inflicted by Mr Holland by kicking the complainant in the jaw. The boots that Mr Holland was wearing at the time were not tendered in evidence. There was a dispute whether the boots were steel-capped. The sentencing judge sentenced Mr Holland on the basis that he was wearing steel-capped boots. Keane JA accepted that the boots could fairly be regarded as a weapon for the purposes of establishing that the identified range of sentences was applicable to Mr Holland's offending.[24] McMurdo P was not however persuaded that whether the boot had a steel cap or whether it was a lace-up boot, was a fact which materially affected the sentencing discretion. McMurdo P noted that the sentencing judge did not regard the use of the boots as comparable to the use of a weapon such as a knife, iron bar or spanner. The sentencing judge also found that the complainant had given some provocation for the attack in that he had been "ogling" Mr Holland's female partner who was partially unclad at the time.[25] The case is distinguishable from the present one. Here there is no suggestion of any provocation and a golf club was used in the commission of the offence.

[42] Mr Holland was 43 years of age at the time of the offence, with a criminal history which included an offence of violence for which he was on a suspended sentence. He was sentenced to five years imprisonment for the offence of grievous bodily harm with intent and the suspended sentence of 12 months was activated in full and ordered to be served cumulatively. There was therefore an effective sentence of six years imprisonment. The court in *R v Holland* concluded that the sentence was not manifestly excessive.

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22 *R v Cobb* [2016] QCA 333, per Philip McMurdo JA (with whom Holmes CJ and Ann Lyons J agreed) at [31].

23 *R v Cobb* [2016] QCA 333, per Philip McMurdo JA at [31].

24 *R v Holland* [2008] QCA 200, per Keane JA at [63].

25 *R v Holland* [2008] QCA 200, per McMurdo P at [4].

[43] *R v Mitchell* may also be distinguished. In that case Mr Mitchell was sentenced to seven years imprisonment with a serious violent offence declaration on one count of unlawfully doing grievous bodily harm with intent. The sentence was a contested one in respect of the events immediately leading up to the commission of the offence. The weapon used in that case was an iron bar. The complainant sustained a laceration to the left elbow and compound fracture of that elbow which required surgical treatment. She also sustained lacerations to her scalp which were sutured, lacerations to her shins, bruising around her left eye and right shoulder and a dislocation of the fifth metatarsal phalangeal joint, which required manipulation. Some of the complainant's symptoms from these injuries were ongoing. Mr Mitchell was intoxicated at the time of the commission of the offence and the sentence proceeded on the basis of a drunken intent and on the basis that the fracture of the left elbow constituted the grievous bodily harm for the purposes of the offence.

[44] At the time of sentencing Mr Mitchell was 51 years of age. He was therefore a more mature person than the present applicant. Mr Mitchell also had a relevant and lengthy criminal history comprising many offences of violence, the first and most important being a conviction after trial in 1980 for manslaughter for which he was sentenced to eight years imprisonment. His criminal history also included numerous lesser offences of violence.

[45] Philippides J (as her Honour then was) (with whom Jerrard JA and White J agreed) noted that given the serious nature of the assault, involving a prolonged attack with a potentially lethal weapon in unprovoked circumstances and Mr Mitchell's very extensive and relevant criminal history, a significant penalty was called for. In those circumstances a sentence of seven years imprisonment with a declaration, although a heavy one requiring a mandatory period of five-and-a-half years to be served, was not one that was outside the sentencing discretion.[26] Accepting that *R v Mitchell* is a more serious case than the present, this is reflected by the making of a declaration.

[46] In *R v Lowe* the appellant was convicted after a trial of one offence of doing grievous bodily harm with intent. He was sentenced to eight years imprisonment, which was reduced on appeal to six years. Williams JA (with whom McPherson and Thomas JJA agreed) noted that Mr Lowe was sentenced on the basis that he attacked the semi-conscious complainant with a piece of wood. The sentencing judge in that case had accepted that the other person involved in the assault had kicked the complainant after Mr Lowe had assaulted the complainant with a piece of wood. Williams JA accepted that the sentencing judge may have erred in contributing some of the injuries (broken ribs) to the appellant. The respondent in the appeal had conceded that a sentence of eight years was a "heavy sentence".[27]

[47] In *R v Oakes* the applicant was sentenced after being found guilty at trial. He had been acquitted of the more serious count of unlawfully attempting to kill the complainant but was convicted of one count of unlawfully causing grievous bodily harm. The sentence imposed was a term of imprisonment for seven years with a declaration which required the applicant to serve 80 per cent of the term of imprisonment prior to becoming eligible for parole. An application for leave to appeal against that sentence on the basis it was manifestly excessive was refused. The offending may be viewed as more serious than the present case. It involved, in

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26 *R v Mitchell* [2006] QCA 240, per Philippides J at [24].

27 *R v Lowe* [2001] QCA 270 at [32].

a domestic situation, threats to kill, multiple stab wounds inflicted by two steak knives and prolonged violence (including attempted strangulation) which only ceased after the intervention of a child. Most of the complainant's physical injuries were superficial and healed without lasting symptoms. She did, however, require surgery to repair tendon and nerve damage to two of her fingers. Oakes had a good work history and modest criminal histories in both Queensland and Victoria involving offences which did not reveal any tendency towards violence. He was sentenced on the basis that he was seriously upset emotionally and heavily intoxicated at the time of the commission of the offence. *Oakes* concerned a longer period of premeditation and the attack ceased upon the intervention of a child. In the present case there was also an element of premeditation in that the applicant moved a wardrobe against the door to prevent escape. The initial intervention by his mother did not bring his attack on the complainant to an end. The attack only ceased once the applicant's uncle intervened. Counsel for the applicant submits in respect of *Oakes* that there are other distinguishable features from the present case. These include the difference in their age and background, the level and duration of the violence inflicted, the inherent dangerousness of the weapon used in *Oakes*, namely steak knives, and the fact that Oakes was convicted after trial, while here the applicant entered a timely plea. Whilst these are distinguishing features, the more serious conduct in *Oakes* was reflected by the making of a declaration.

[48] In *R v Amery* the applicant was 47 years old when he committed the offence. He had an extensive criminal history which included armed robbery. The attack was on his de facto partner with a 10 pound sledgehammer. He hit the complainant's head twice with the sledgehammer while she was lying in bed. The complainant suffered two deep lacerations to her skull, a skull fracture and two damaged teeth. She underwent surgery. If the complainant's injury had been left untreated, the open wound would have likely led to infection. The complainant did, however, make a full recovery from her injuries. The sentence imposed was eight years without a declaration. Mullins J (with whom Fraser JA and Douglas J agreed) accepted that the notional sentence of eight years imprisonment was not outside the appropriate range. Her Honour in this respect had regard to the applicant's age, antecedents, the use of a sledgehammer, the fact that the conduct was in breach of a domestic violence order and occurred while the complainant was sleeping.[28] The sentence was adjusted to seven years and seven months to take into account pre-sentence custody of 140 days. The Court of Appeal also fixed a parole eligibility date after the applicant had served three years of that term of imprisonment.

[49] Whilst the offending in *Amery* was in breach of a domestic violence order, in the present case the learned sentencing judge had to take into account that the offending occurred during the operational period of two suspended sentences. There is no suggestion that his Honour erred in activating the balance of both suspended terms of imprisonment. These terms were ordered to be served concurrently with each other and with the head sentence of seven years. The applicant therefore received the benefit of having no part of the balance of the suspended sentences being made cumulative with the head sentence. The totality of the structured sentence was reflected by the fixing of a parole eligibility date at 1 December 2018. When one compares the structure of the sentence imposed in the present case with that considered in *R v Amery*, a head sentence of seven years, with a parole eligibility date fixed at 1 December 2018, is not manifestly excessive. In structuring the

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28 *R v Amery* [2011] QCA 383, per Mullins J at [24].

sentence his Honour took into account the applicant's young age and dysfunctional upbringing, as well as his plea of guilty and criminal history. The fact that the activated terms of suspended imprisonment were ordered to be served concurrently with the head sentence demonstrates, in all the circumstances, an appropriate exercise of the sentencing discretion.

**Disposition**

[50] The application for leave to appeal against sentence should be refused.