

COURT OF APPEAL

de JERSEY CJ  
HELMAN J  
JONES J

CA No 198 of 2002

THE QUEEN

v.

ANDREW JOHN MILLAR

BRISBANE

..DATE 25/09/2002

JUDGMENT

THE CHIEF JUSTICE: In this application for leave to appeal against sentence, the applicant's ground is that the learned sentencing Judge was led to impose a manifestly excessive sentence by resort to irrelevant factual considerations.

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As the matter was developed the applicant sought as appears from our earlier ruling to impugn the victim impact statement dated 4th June 2002 from the complainant, which is exhibited to Mr Gorrie's affidavit. We would not permit that to be done but in any event the important consideration is that that appears not to have been before the learned sentencing Judge anyway.

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The Judge sentenced the applicant against a background where the complainant was asserting that she had been and was still as at June fearful of contact with the applicant.

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The application relates to sentences imposed concurrently for the dangerous operation of a motor vehicle and common assault, six months' imprisonment, stalking with circumstances of aggravation, two years' imprisonment, and the activation in full of a nine month suspended sentence which had been imposed for fraud and receiving.

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The circumstances of the offences in brief are that the applicant and the complainant had been in a relationship for approximately nine months and then lived as man and wife for about a fortnight until the complainant moved out because of physical and verbal abuse by the applicant.

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The complainant indicated she wished to cease the relationship with the applicant and finally on the 5th September 2000 she said that she wished to cease all contact with him.

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Subsequently to that the events which comprised the offence of stalking occurred. The count to which the applicant pleaded guilty was that between the 11th September 2000 and the 27th March 2001 he unlawfully stalked the complainant.

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APPLICANT: The 27th March was dropped, that is just an error.

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THE CHIEF JUSTICE: Right.

APPLICANT: 26th December.

THE CHIEF JUSTICE: 26th December 2000. So it is over about four months or thereabouts. In the course of it, the complainant obtained a domestic violence order which the applicant subsequently breached. The stalking essentially comprised menacing telephone calls, banging on her door, threats and letters and other items left at her residence culminating in the applicant's attempting to run the complainant off the road during the day on the 24th December 2000.

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This caused the complainant to veer onto the incorrect side of Sandgate Road which is, as well known, a busy road. Later he drove his vehicle into hers and assaulted an off duty police officer who attempted to give the complainant assistance.

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The matter was initially listed as a trial but on the 3rd June this year the applicant pleaded guilty to the stalking offence but not guilty to the dangerous driving and assault charges. Guilty pleas were also entered in respect of those charges following modification of the charges. Because the applicant had to undergo surgery the sentencing was adjourned till the 14th June.

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The learned Judge referred to the applicant's criminal history which was fundamentally a history of dishonesty, mentioned the fact that he had received earlier terms of imprisonment, mentioned that the dangerous driving and associated offences occurred about three months into the period of the suspended sentence, that the unlawful stalking occurred during the period of a domestic violence order, that the offences were not compulsive or reactionary, that the complainant had been affected by the applicant's conduct and was in fear for her safety and said she still was, that the complainant was required to relive the experiences by having to give evidence and being cross-examined at committal proceedings and that a psychological report on the other hand indicated that the applicant was remorseful.

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The applicant before us today has stressed that his prior history was one confined essentially to offences of dishonesty. He would add that he is a young man, 30 years old. He emphasised his remorse, the fact that while he was on bail for a year he made no contact though he could have with the complainant. He stressed the fact that some of the other

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decisions to which we have been referred, as said to be comparable, concerned situations where there was no emotional relationship between the complainant and the offender such that, as he would have it, he should have been treated more leniently than in those cases.

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I would say for my part that that is not a feature which should necessarily lead to a lower penalty being imposed, where the stalking follows the break-up of an emotional relationship.

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The cases to which we were referred by the Crown do, in my view, in a situation like this confirm that the sentence of two years imposed for the offence of stalking was not manifestly excessive. I would refuse the application.

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HELMAN J: I agree.

JONES J: I agree.

THE CHIEF JUSTICE: The application is refused.

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