SUPREME COURT OF QUEENSLAND

CITATION:	*R v Rann* [2005] QCA 366
PARTIES:	**R** **v** **RANN, Robert Allan James** (applicant)
FILE NO/S:	CA No 184 of 2005 DC No 1838 of 2005
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	30 September 2005
DELIVERED AT:	Brisbane
HEARING DATE:	23 September 2005
JUDGES:	McPherson JA and Cullinane and Jones 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 refused**
CATCHWORDS:	CRIMINAL LAW - APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION - APPEAL AND NEW TRIAL - APPEAL AGAINST SENTENCE - APPEAL BY CONVICTED PERSONS - APPLICATIONS TO REDUCE SENTENCE - where applicant pleaded guilty to six counts of assault occasioning bodily harm committed against his 16 and a half month old daughter - where offences committed over a period of 12 hours - where complainant suffered a cut to her lower lip and bruising to the right eye, right ear, left ear, left forehead, right cheek, right chin, back and abdomen - where applicant sentenced to 18 months imprisonment to be suspended after serving six months imprisonment with an operational period of three years - where applicant remorseful and has taken steps to rehabilitate himself - whether sentence imposed manifestly excessive *King & Kordick v Styles* [1997] QCA 278; CA No 215 of 1997, 12 September 1997, discussed *The Queen v R* [2001] QCA 305;CA No 68 of 2001, 30 July 2001, discussed
COUNSEL:	C W Heaton for the applicant

R Pointing for the respondent

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

[1] **McPHERSON JA:** I agree with Cullinane J that, for the reasons he gives, this application for leave to appeal against sentence should be refused.

[2] **CULLINANE J**: The applicant seeks leave to appeal against a sentence of 18 months imprisonment to be suspended after serving six months with an operational period of three years imposed in respect of each of the six counts of assault occasioning bodily harm with which he was charged. The offences were committed on 3 and 4 June 2004 and involved in each case the applicant's 16 and a half month old daughter.

[3] He pleaded guilty and was sentenced on 19 July 2005 in the District Court at Brisbane.

[4] He was born on 22 May 1978 and has no prior convictions.

[5] The applicant and the complainant's mother at the time shared responsibility for caring for the complainant and another child, a six year old daughter. The applicant was living in a de facto relationship with another woman and their eight month old child.

[6] At the time of the offences, the applicant had the custody of both of his children for about two weeks. The offences occurred in the course of the day of 3 June and the early hours of the morning of 4 June 2004.

[7] The complainant's mother picked up the child on 7 June 2004 and noticed that she had a cut to her lower lip and bruising to the right eye, right ear, left ear, left forehead, right cheek, right chin, back and abdomen.

[8] When she sought an explanation from the applicant he told her that the child had fallen off a chair. After taking the child to the Mater Children's Hospital and being informed that it was unlikely that such injuries could have been sustained in such a way, she notified the police who interviewed the applicant on 9 June 2004. He repeated the claim that the child had been standing on a chair and fallen and had hit her head near her ear. When asked about the other injuries, he could not explain them and said he was only aware of one bruise on her face and one behind the ear as a result of the fall. He said that he had not obtained medical treatment for the child because he did not have a Medicare card for her.

[9] The respondent accepts the summary of the offences contained in the applicant's outline as follows:

1. **Count 1**: At about 11.45am, he was putting the complainant to bed when she started crying. He grabbed her under her chin with his hand and raised her into the air by that method and put her in the cot. He saw then that she was unable to breathe for a few seconds and her face went red. These

actions are consistent with the bruises under her chin. He said that she cried loudly after he did that.

2. **Count 2**: Later that day at around 4.30pm, he again put her into her cot, this time he gripped her around her body on the outside of her arms. He said that his thumbs and hands dug into her back and stomach and she appeared to wince in pain. He was still frustrated with her, he said. This action would account for the 7 small bruises on her back and the 7 small bruises on her abdomen.

3. **Count 3**: After dinner, the complainant began to get sooky and, again out of frustration, he 'clipped' her around the ear using the front of his hand. This caused her to wobble but not to fall over. She cried. Before putting her into her cot, he again gave her a right-handed slap to her left ear with sufficient force to cause her to fall over from a sitting position.

4. **Count 4**: At about 11pm, the applicant went to check on the complainant and found her awake. He then hit her on the right ear with the back of his hand causing her to fall back into the cot. At the time of the interview with police some 5 or 6 days later, he said that the knuckles on his right hand were still sore from that hit.

5. **Count 5**: At around midnight, he again went to check on the complainant and again found her to be awake. He again slapped her with the back of his hand around her right ear causing her to fall onto her stomach.

6. **Count 6**: At around 1am, he again went to check on her and again struck her because she was not sleeping. This time he struck her twice across the face. He said that she didn't fall after the first hit because she was holding onto the side of the cot, so he struck her again. She suffered an injury to her lips and a black eye as a result of this assault.

[10] It is apparent that without the cooperation of the applicant and his forthrightness with the police, the police would not have been aware of the number of assaults which were committed on the complainant by the applicant or their details.

[11] So far as the last of the assaults is concerned, it is said that the applicant had consumed some alcohol at that time, although he did not advance through his counsel any suggestion that alcohol played any significant role in the commission of that offence.

[12] The learned sentencing judge dealt with the applicant upon the basis that the applicant had become frustrated with the complainant as a result of his belief that the child was fonder of her mother than of him and did not respond to him as a father.

[13] Since the offences the applicant has undertaken an anger management program and parenting course, which he has completed successfully.

[14] In a letter from the Department of Child Safety which was tendered, it was stated by the officer who signed the document that during her work with the family "no further child protection concerns have been raised in regard to [the applicant's]

interaction with his daughter or his caring ability of his other three children who reside in his care."

[15] The applicant sees the complainant, who is apparently now in foster care, each week and the evidence suggests that he is an affectionate father. The learned sentencing judge referred to the applicant's remorse and the fact that he had undergone anger management counselling.

[16] The learned sentencing judge observed that most conduct of this kind occurs at a time when the offender is angry and the conduct is not premeditated and harm is not necessarily intended.

[17] In passing sentence, the learned sentencing judge pointed out that it was not a case of a single loss of temper with a crying child, but six separate assaults over a period of some 12 hours.

[18] Some attempt was made before us to contend that the matter should be regarded as involving a single episode of violence arising out of frustration which persisted over the course of some 12 hours. In my view, whilst the matter cannot be viewed in the same category as prolonged abuse over weeks or months, it is not possible to treat it as a single incident as suggested. A number of assaults occurred over the course of one day and extending into the early hours of the next day. Adequate time passed between the various incidents for the applicant to have cooled down and the continuation of the assaults against a defenceless child over this period is the most serious aspect of the matter.

[19] His Honour quite rightly pointed out the need to impose sentences which acted as a deterrent to those who might assault young children.

[20] Each counsel relied upon the same two cases (*The Queen v R*[1] and *King & Kordick v Styles*[2]).

[21] The latter of these offences was committed prior to amendments to the legislation which took effect as from 1 July 1997 and introduced a new maximum penalty of some seven years instead of the previous three years.

[22] In *King & Kordick v Styles* the applicant was sentenced to nine months imprisonment for a conviction of assault occasioning bodily harm upon his 10 month old child. He had been sentenced earlier to three months imprisonment wholly suspended for a similar assault upon a two and a half year old step son. The second offence was committed during the occurrence of the operational period in respect of the first. He was ordered to serve the three month suspended sentence cumulative upon the nine months that was imposed for the second offence. The second offence was committed when the applicant struck his son in the face blackening his right eye and leaving finger marks on the face of the complainant. The offence arose out of frustration on the part of the applicant with the child's refusal to eat.

[23] The applicant had no prior convictions and was aged 26. It was accepted by the Court of Appeal that he had difficulty controlling himself when under stress and

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1 [2001] QCA 305, CA No 68 of 2001, 30 July 2001

2 [1997] QCA 278, CA No 215 of 1997, 12 September 1997

was remorseful for what had occurred. He had undergone counselling voluntarily following the offence.

[24] The Court of Appeal held that the court had given insufficient weight to the personal fact of rehabilitation and considered that a head sentence of six months would have been justified but was of the view that a sentence should be imposed which would provide the applicant with assistance in having the applicant deal with his problems with anger when faced with situations of stress and frustration. He had been in prison between 12 May 1997 and the date of judgment on 12 September 1997 and the court ordered that he be released forthwith on probation for a period of 12 months.

[25] In *The Queen v R*, the applicant pleaded not guilty and was convicted after trial. He was sentenced to 18 months imprisonment for an assault upon the six month old daughter of his de facto partner. There was extensive bruising to the face and body including a seven and a half centimetre in diameter bruise around the left eye. The applicant's case, which was rejected by the jury, was that the child had injured herself in a fall.

[26] He had an extensive criminal history for offences of violence and dishonesty.

[27] The Court refused an application for leave to extend the time within which to appeal (some two weeks late), expressing the view that the applicant did not appear to have promising grounds of appeal. There was no direct evidence in that case as to the circumstances in which the complainant had sustained the extensive bruising to the face and body which was observed. Counsel for the respondent here suggests that it may have been the result of a single blow but the description of the injuries at page 3 of the judgment, would, I think, be difficult to reconcile with a single blow.

[28] The applicant and the respondent each emphasised separate aspects of these two cases. In the case of *The Queen v R*, the applicant did not have the benefit of a plea of guilty, whilst in the latter case there was the aggravating feature of the earlier offence, with the second offence being committed during the operational period of that offence. In *King & Kordick v Styles* the applicant was dealt with on the basis that a single blow was inflicted. However, the applicant had an earlier conviction and the operational period of the suspended sentence was current when the later offence was committed.

[29] The present case involving as it does, a series of serious assaults upon a young child extending throughout a day and evening, makes this in my view a case in which the assaults were more serious than the assaults in those cases.

[30] The efforts by the applicant to rehabilitate and his desire to be a good and affectionate father to the complainant can only be commended. No doubt the latter of these has been a primary motivation for the former. However, making all due allowance for the significance of the applicant's prior good behaviour, his remorse and his so far successful attempts to address his problems and the fact that he maintains a loving relationship with the complainant, I am not persuaded that the sentence which was imposed here of 18 months imprisonment suspended after six months, can be regarded as excessive.

[31] Necessarily the consideration of deterrence looms large in a case of this kind and his Honour in my view imposed a sentence which was well within the range of his sentencing discretion.

[32] I would refuse the application for leave to appeal.

[33] **JONES J:** I have had the advantage of reading the reasons of Cullinane J. I agree with those reasons and the order he proposes.