SUPREME COURT OF QUEENSLAND

CITATION:	*R v Marshall* [2021] QCA 55
PARTIES:	**R** **v** **MARSHALL, Simon Donald Aubrey** (appellant/applicant)
FILE NO/S:	CA No 157 of 2020 CA No 233 of 2020 DC No 810 of 2020 DC No 1476 of 2020 DC No 1492 of 2020
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction & Sentence
ORIGINATING COURT:	District Court at Brisbane Date of Conviction and Sentence: 21 July 2020 (Sheridan DCJ)
DELIVERED ON:	26 March 2021
DELIVERED AT:	Brisbane
HEARING DATE:	23 March 2021
JUDGES:	Sofronoff P and Morrison JA and Boddice J
ORDERS:	**1. The appeal against conviction be dismissed.** **2. Leave to appeal against sentence be refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS OF APPEAL – CONDUCT OF DEFENCE COUNSEL – where the appellant pleaded guilty to grievous bodily harm and other offences – where the appellant contends he entered a plea of guilty as a result of poor legal representation – where the appellant also accepts that he was aware of the factual basis relied upon by the Crown for the offence of grievous bodily harm – where there is no basis for a conclusion that the appellant entered his plea of guilty involuntarily CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the appellant was sentenced to four and a half years' imprisonment on the count of grievous bodily harm and lesser concurrent periods of imprisonment for the remaining offences – where the offence of grievous bodily harm and many of the other offences were committed whilst he was subject to parole and two probation orders – where the appellant was sentenced for a number of other offences committed after the offence of grievous bodily harm

as well as some summary offences committed prior to the offence of grievous bodily harm – where the sentence of four and a half years' imprisonment imposed on the count of grievous bodily harm recognised the totality of the appellant's criminality for all offences – whether the sentence was manifestly excessive

R v Armstrong [2014] QCA 274, cited
R v Norris [2012] QCA 57, cited
R v Presgrave [2014] QCA 105, cited

COUNSEL: The appellant/applicant appeared on his own behalf
M T Whitbread for the respondent

SOLICITORS: The appellant/applicant appeared on his own behalf
Director of Public Prosecutions (Queensland) for the respondent

[1] **SOFRONOFF P:** I agree with the reasons of Boddice J and the orders proposed.

[2] **MORRISON JA:** I have read the reasons of Boddice J and agree with those reasons and the orders his Honour proposes.

[3] **BODDICE J:** On 21 July 2020, the appellant pleaded guilty to offences of grievous bodily harm, attempted fraud (two), commit public nuisance, enter premises and commit an indictable offence, fraud, stealing (17), stealing from the person and threats.

[4] On the same date, the appellant was sentenced to four and a half years' imprisonment on the count of grievous bodily harm and lesser concurrent periods of imprisonment for the remaining offences. Some 280 days of pre-sentence custody was declared as time served and a parole eligibility date was set at 15 April 2021.

[5] On 11 August 2020, the appellant filed an application for leave to appeal against sentence. The sole ground of appeal, should leave be granted, was that the sentence of imprisonment for the offence of grievous bodily harm is manifestly excessive.

[6] On 20 October 2020, the appellant filed an application for an extension of time within which to appeal and notice of appeal against conviction. On 3 December 2020, an extension of time was granted to appeal against conviction.

Conviction

[7] The conviction appeal only relates to the offence of grievous bodily harm. The appellant contends he entered a plea of guilty as a result of poor legal representation and, in circumstances where he was acting in self-defence when he committed the offence of grievous bodily harm.

[8] The appellant accepts he did enter a plea of guilty to the offence, after receiving legal advice. Nothing placed before this Court supports an assertion that the appellant's plea was entered involuntarily.

[9] The appellant also accepts that he was aware of the factual basis relied upon by the Crown for the offence of grievous bodily harm, namely, that he had punched the complainant twice in the face. His complaint is that his version, that he did not punch the complainant at all, was not pressed at sentence; and that his version, that

he pushed the complainant who then fell down some stairs, was not relied upon in support of a defence of self-defence.

[10] It is unsurprising that the appellant's version was not pressed on sentence. It was entirely inconsistent with his plea of guilty to the offence of grievous bodily harm. The versions given by the appellant also did not support the existence of such a defence. At best, the appellant asserted the victim was falsely accusing him of stealing a mop and bucket and he pushed him causing him to fall down some stairs. That scenario does not explain how a defence of self-defence could arise for consideration, on the evidence, let alone not be able to be negatived by the Crown.

[11] As there is no basis for a conclusion that the appellant entered his plea of guilty involuntarily, and there was no basis in law for a defence of self-defence, the appellant has not met the onus placed on him of establishing a miscarriage of justice. There is no basis to conclude that the appellant did not understand the nature of the charges and did not intend to admit guilt, or that upon the admitted facts the appellant could not have been guilty of the offence, or that the guilty plea was obtained improperly by inducement, fraud, intimidation or the like.[1]

Sentence

[12] The appellant was aged 42 years at the time of the commission of the offence and 43 at sentence. He had a relevant, but largely dated, criminal history in respect of offences of violence. Of importance, however, the offence of grievous bodily harm and many of the other offences were committed whilst he was subject to parole and two probation orders. A court report, in relation to his performance on probation, outlined a superficial response and minimal motivation to address his offending behaviour.

[13] The offence of grievous bodily harm itself resulted in significant injury to the victim, a 51 year old man. He was first punched to the face before being dragged some distance and was punched again. Consequently, the victim suffered a fracture to his jaw, involving a grossly displaced right mandibular, which required surgery and hospitalisation.

[14] Those circumstances in themselves indicate that a substantial period of imprisonment was warranted for the offence of grievous bodily harm. However, the appellant was not only being sentenced for that offence. He was sentenced for a number of other offences committed after the offence of grievous bodily harm as well as some summary offences committed prior to the offence of grievous bodily harm.

[15] The sentence of four and a half years' imprisonment imposed on the count of grievous bodily harm recognised the totality of the appellant's criminality for all offences. That course, adopted by the sentencing Judge at the suggestion of counsel, is consistent with sentencing principles. Where multiple offences are being considered, the overall sentence imposed should reflect the totality of a person's criminality.

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1 *R v Armstrong* [2014] QCA 274 at [20].

[16] Against that background, there is no basis to conclude that the sentence for grievous bodily harm was contrary to proper application of sentencing principles. Further, comparable authorities amply support a conclusion that a sentence of up to four years' imprisonment would have been justified for the offence of grievous bodily harm alone.[2]

[17] Having regard to the multitude and seriousness of the remaining offences to which the appellant pleaded guilty, there is no basis to conclude that an overall head sentence of four and a half years', imposed on the offence of grievous bodily harm, was manifestly excessive. Such a sentence does not evidence any misapplication of sentencing principles. The sentence imposed was plainly neither unfair nor unjust.

[18] I would order:

1. The appeal against conviction be dismissed.

2. Leave to appeal against sentence be refused.

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2 *R v Presgrave* [2014] QCA 105; *R v Norris* [2012] QCA 57.