DISTRICT COURT OF QUEENSLAND

CITATION:	*Sam v Queensland Police Service* [2016] QDC 184
PARTIES:	**JAMIE CECIL SAM** **(appellant)** **v** **QUEENSLAND POLICE SERVICE** **(respondent)**
FILE NO/S:	1/2016
DIVISION:	Appellant
PROCEEDING:	Appeal
ORIGINATING COURT:	District Court at Mount Isa
DELIVERED ON:	24 June 2016 (ex tempore)
DELIVERED AT:	Mount Isa
HEARING DATE:	24 June 2016
JUDGE:	Dearden DCJ
ORDER:	**Appeal dismissed**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – where the defendant sentence for offences of commit public nuisance, obstruct police and breach of bail - where defendant was sentenced to an 18 month probation order – where no conviction was recorded – where defendant had significant juvenile criminal history – where the learned magistrate obtained informed consent - whether the learned magistrate correctly identified the nature of the offence – whether the sentence was manifestly excessive
LEGISLATION:	*Justices Act 1886* (Qld) *Youth Justice Act 1991* (Qld)
CASES:	*Tierney v Commissioner of Police* [2011] QCA 327
COUNSEL:	W Hunter for the appellant E Kelso for the respondent.
SOLICITORS:	WLH Law for the appellant Office of the Director of Public Prosecutions for the

respondent.

[1] This is an appeal by the appellant, Jamie Cecil Sam, in respect of the sentence imposed in relation to offences of commit public nuisance, obstruct police in a public place while adversely affected by an intoxicating substance and breach of bail. The penalties imposed were a single 18 month probation order with no conviction order in respect of all three offences and a 40 hour community service order, similarly with no conviction recorded, relevant to the obstruct police charge.

[2] The appellant appeals on the basis that the sentence imposed is manifestly excessive in all the circumstances. The appeal proceeds, of course, under section 222 of the *Justices Act 1886* (Qld). The relevant test on such an appeal has been outlined in various terms in the Court of Appeal over the years and is very succinctly summarised by Margaret Wilson HAA (as she then was) in *Tierney v Commissioner of Police*[1]. In these terms:

> "An appeal from a Magistrates Court to the District Court pursuant to s.222 of the *Justices Act 1886* (Qld) is a rehearing on the evidence given at trial and any new evidence adduced by leave. In other words, it involves a review of the record of proceedings below subject to the District Court's power to admit new evidence. To succeed, an appellant needs to show some legal, factual or discretionary error."[2]

[3] The facts of the offending from paragraph 3.1 of the respondent's outline of submissions (exhibit 1):

> At 2.05 am on 14 November 2015, Dog Squad police were conducting a trial at Pioneer. Those police saw a group of about 40 young people involved in a verbal argument. The appellant was noted as displaying aggressive hand gestures and appeared angry with other males. Police could not however hear what was being said. As police approached, the group dispersed. About five minutes later, police approached the appellant parking next to him. The appellant was standing approximately three metres away from the car. He was standing on the footpath. Police told the appellant that it was 2.10 am and he should be at home in bed.

---

[1] [2011] QCA 327

[2] *Tierney v Commissioner of Police* [2011] QCA 327, para 26.

The appellant was polite with police at this time. Police then left. Shortly after police saw the appellant and a group of about 20 people at an intersection. The appellant was shouting loudly and displaying combative and threatening verbal and non-verbal gestures towards another male. It was alleged at sentence that the appellant could be seen and heard by all of the nearby community members, including men and women who were on verandas watching the appellant's behaviour. Police approached and saw the appellant punch a male to the head a number of times. That male retaliated and a fight broke out between the appellant and this male. Police approached and told the appellant that he was under arrest for public nuisance. Police grabbed the appellant by the elbow and wrist. His face at the time was covered with blood.

The appellant then swung a punch at a police officer's head. The officer took a step back to avoid the punch and the appellant was taken to the ground by police, restrained and taken to a police car. During that process, the appellant struggled with police by jumping up and down, attempted to run away and thrashed his legs about. He was warned multiple times to cease his actions. While escorting the appellant two police officers received minor abrasions and cuts to their hands from the acts of the appellant. As police attempted to put the appellant into the police car, he placed his leg up on the side of the car and kicked back, which action caused his head to connect with a police officer's head. The appellant was then secured for a pat down search. The appellant starting spitting blood at the police car.

The appellant was taken to a watch-house. He was released on bail to appear on 30 November 2015. He appeared on that date but failed to appeal next on 5 January 2016 and a warrant was issued. The appellant was located on 12 January [2016] and arrest on the warrant. He told police that he thought he had to appear on 12 January 2016.

[4] The appellant has a significant criminal history as a juvenile. He has 17 prior appearances in the Childrens Court for a total of 53 offences, most of which are property or dishonest offending. The offending spans a period of five years and four months from April 2010 to August 2015. During that period the application

received nine separate probation orders. The applicant continued to offend despite the probation orders and, notably, had on four separate occasions committed the offences of public nuisance and on four separate occasions committed the offence of assault or obstruct police. The appellant also had one previous failure to appear.

[5] Pursuant to section 148 of the *Youth Justice Act 1991* (Qld), childhood findings of guilt are admissible on the sentence of an adult even if a conviction was not recorded, and it's notable that throughout the appellant's very substantial youth justice criminal history, he was the beneficiary of no conviction recorders – recorded for all of the entries. The exchange between the learned magistrate, the police prosecutor and Mr Hunter, who appeared on the sentence and appears on this appeal, involved some discussion about some of the events which could readily have grounded charges of assault police or even serious assault but, as Mr Hunter quite properly pointed out, the matter proceeded substantively with the public nuisance offence and the obstruct offence, although as the magistrate observed in that exchange, it was a protracted obstruction and it's clear from the nature of the appellant's conduct that it had quite serious aspects to it.

[6] During the exchange, the learned magistrate asked Mr Hunter for his "ultimate submission", which was that the appellant be dealt with by way of fines and when asked whether the appellant would have benefit from an adult period of probation, Mr Hunter conceded that it would be more effective and beneficial, although, as he pointed out in oral submissions today, there was no discussion about the length of that probation.

[7] At the end of the day, the basis for the appeal is that the period of 18 months of probation was "manifestly excessive", although Mr Hunter in his written submissions and orally on the appearance today concedes that a period of nine to 12 months' probation would not have been excessive. The issue then, really, is – on appeal, is 18 months' probation so "manifestly excessive" that it warrants this court intervening in the sentence imposed by the learned magistrate. The concession by Mr Hunter that a probation order could be made, I accept, was not a concession in which there was a discussion about the length of probation, but on the other hand, the learned magistrate quite properly identified the following in his sentencing remarks and then took appropriate steps to ensure that the appellant gave informed consent to the 18 month probation order.

[8] The learned magistrate, in his sentencing remarks, identified that:

> "The obstruct is clearly at the higher end of obstruct and it was a protracted obstruct to police while you [the appellant] were adversely affected by an intoxicating substance and was committed in a public place." (Decision, p.2.)

[9] The learned Magistrate identified that it is:

> "…the case where you have an extensive Childrens Court history. This is your first adult Court appearance. You have had a number of supervision orders in the Childrens Court and I'm willing to offer you a further supervision order in the adult Court. You need to be made aware that the consequences of failing to comply with an adult supervision order are far more stringent than they are from the youth justice orders." (Decision, p.2.)

[10] The learned Magistrate then, in an entirely appropriate and orthodox way, identified the length of the probation (18 months), identified the conditions of probation and then said to the appellant "[d]o you understand those terms and conditions?" to which the defendant replied, "Yep."

[11] The learned magistrate then said: "[d]o you understand that if you breach those terms and conditions you can, amongst other things, be brought back to court and be dealt with for these three offences?" and the defendant replied, "Yep."

The learned magistrate then said: "[d]o you also understand that if there's a significant change in your circumstance you can bring an application to the court to discharge the order and substitute a different penalty. Being made aware of all that, do you agree to me making the probation order in the terms and conditions that I've outlined?" to which the defendant replied (again, monosyllabically), "Yep."

[12] In all of those circumstances, it is, in my view, clear that the learned magistrate correctly identified the serious nature of the obstruct police charge in its context and following, as it did, the public nuisance offence, that there was no undue weight placed on the failure to appear offence (Mr Hunter has identified today the relatively minor nature of that matter and the fact that the appellant spent some period of hours in the watch-house). And the learned magistrate very clearly articulated both

the length of the probation and the conditions and obtained appropriate informed consent from the appellant after making it very clear to him the consequences and also distinguishing between the potential consequences of failing to comply with a youth justice probation order as opposed to an adult probation order.

[13] In all the circumstances, I do not consider that the learned magistrate has exhibited any legal, factual or discretionary error. On the contrary, I think the learned magistrate has carefully and appropriately articulated the relevant sentencing considerations, obtained the appropriate informed consent and, in those circumstances, I'm not persuaded that the probation component of 18 months in the order made by the learned magistrate with the appellant's consent was "manifested excessive". It follows that the appeal is dismissed.