

***Cranfield v Watson* [2013] ACTSC 160 (1 August 2013) – Australian Capital Territory Supreme Court**

‘Manifestly excessive’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Sentencing’

Charges: Assault occasioning actual bodily harm (two counts)

Appeal type: Appeal against sentence

Facts: The appellant and complainant were in a relationship and resided together with their son. While arguing one day, the appellant grabbed the complainant’s arm and punched her in the face a number of times. In response, the complainant struck the appellant in the torso. The pair continued to exchange blows throughout the day with the appellant striking the complainant to the face and punching her thigh, and the complainant hitting the appellant in the torso and face and biting his arm. A week later, the appellant became angry after having computer difficulties and started swearing at the complainant. When she told him to stop being pathetic and throwing tantrums, the appellant slapped the complainant and caused her eardrum to rupture.

In relation to this conduct the appellant was charged and convicted of two counts of assault occasioning actual bodily harm. He was sentenced to 11 months’ imprisonment for the first offence and five months’ imprisonment, of which two months’ was to be served concurrently with the sentence imposed for the first offence, for the second offence. The total sentence was therefore 14 months’ imprisonment. Five months of that sentence was to be served in full custody, with the following five months to be served by way of periodic detention, and the remaining four months suspended upon the appellant entering into a good behaviour order for two years.

The magistrate considered that it was an aggravating feature of the first offence that the assault was comprised of several violent, physical contacts that extended over a period of time. He also considered it was an aggravating feature of both offences that they included blows to the head and face of a female. Finally, his Honour considered the ruptured eardrum of the complainant was an aggravating factor of the second offence.

Issue: Whether the sentence imposed was manifestly excessive.

Decision and reasoning: The appeal was upheld and the appellant was re-sentenced.

The magistrate erred in considering that the nature and duration of the violence in relation to the first offence was an aggravating feature. Rather, it was a circumstance that was relevant to the sentencing of the appellant. Further, the fact the complainant suffered a ruptured eardrum was not an aggravating feature of the second offence. It was merely an element of that offence — namely, that the assault resulted in actual bodily harm. The magistrate also failed to properly consider a psychiatrist report put before him. That report noted that the appellant's domestic violence was likely related to his on-going mental health difficulties including suffering from post-traumatic stress disorder.

Burns J considered the term of imprisonment with respect to the offences was excessive where there was evidence that the appellant's conduct was either caused by or contributed to by mental health conditions. These conditions were capable of being treated. Further, the appellant did not have a significant history of violent offending, having only been convicted of two offences of common assault 11 years prior to the offending.

In resentencing the appellant, Burns J accepted that the offences warranted terms of imprisonment. The appellant was sentenced to six months' imprisonment for the first offence and two months' imprisonment for the second offence. The total sentence of seven months' imprisonment was backdated to recognise the two months the appellant had already spent in custody, and suspended thereafter. Burns J imposed a good behaviour order for two years with the conditions the appellant accept supervision and obey reasonable directions; undertake programs or counselling as directed, including the Family Violence Cognitive Self Change Program if appropriate; and undertake counselling or treatment with respect to mental health issues.