

***R v Fairbrother; ex parte AG (Qld)* [2005] QCA 105 (15 April 2005) – Queensland Court of Appeal**

‘Assault occasioning bodily harm’ – ‘Denunciation’ – ‘Physical violence and harm’ – ‘Sentencing’

Charge/s: Assault occasioning bodily harm.

Appeal Type: Appeal against sentence.

Facts: Following being released from police custody subject to conditions imposed under the then *Domestic Violence (Family Protection) Act 1989* that the respondent not have contact with the complainant (his domestic partner) and that he not go to her residence, the respondent returned to her home and threw boiling water onto her twice. It is unclear whether at the time of the offence, there was a current or lapsed protection order against the respondent in favour of the complainant. He pleaded guilty on the second day of trial and was sentenced to 2.5 years imprisonment for assault occasioning bodily harm, wholly suspended with an operational period of four years.

Issue/s: Whether the full suspension of the sentence made it manifestly inadequate.

Decision and Reasoning: The appeal was dismissed. The injuries caused the complainant severe pain over a long period and also caused some mental health issues. The respondent had some history of domestic violence. This was a ‘reasonably bad’ (at [21]) example of the offence which occurred hours after the appellant had been removed from the complainant’s home by police. However, mitigating factors included his guilty plea, his good work history and his efforts at rehabilitation. Furthermore, the respondent was not sentenced at trial for deliberately pouring boiling water on the complainant. If it had been deliberate, he would have been sentenced to actual imprisonment of at least 12 months before suspension. This was nevertheless a ‘serious example of domestic violence’ with the sentence imposed at trial being a correspondingly ‘substantial penalty’ (See at [24]).

See in particular McMurdo P’s (Jerrard JA and Cullinane J agreeing) comments on the impacts of domestic violence and the approach to sentencing at [23] –

'Domestic violence is an insidious, prevalent and serious problem in our society. Victims are often too ashamed to publicly complain, partly because of misguided feelings of guilt and responsibility for the perpetrator's actions. Members of the community are often reluctant to become involved in the personal relationships of others where domestic violence is concerned. Perpetrators of domestic violence often fail to have insight into the seriousness of their offending, claiming an entitlement to behave in that way or at least to be forgiven by the victim and to evade punishment by society. Domestic violence has a deleterious on-going impact not only on the immediate victim but on the victim's wider family and ultimately on the whole of society. It is not solely a domestic issue; it is a crime against the State warranting salutary punishment. The cost to the community in terms of lost income and productivity, medical and psychological treatment and on-going social problems is immense. Perpetrators of serious acts of domestic violence must know that society will not tolerate such behaviour. They can expect the courts to impose significant sentences of imprisonment involving actual custody to deter not only individual offenders but also others who might otherwise think they can commit such acts with near impunity.'