

***R v Postchild* [2013] QCA 227 (20 August 2013) – Queensland Court of Appeal**

‘Mitigating factors’ – ‘Physical violence and harm’ – ‘Rape’ – ‘Sentencing’ – ‘Sexual and reproductive abuse’

Charge/s: Rape

Appeal Type: Appeal against sentence.

Facts: The applicant was convicted of the rape of his girlfriend and was sentenced to six years’ imprisonment. It is unclear whether at the time of the offence, there was a current or lapsed protection order against the applicant in favour of the victim. The applicant had an extensive criminal history, consisting of street and property offences, as well as a previous conviction for carnal knowledge of a 13 year old girl. He had previously breached a reporting condition associated with this conviction. He committed the rape while on parole for unrelated offending. The primary judge described the rape as a ‘brutal act’, and that the applicant had treated his girlfriend as, ‘an object for his own sexual gratification and had had no regard for her feelings’ (See at [15]).

Issue/s: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed by majority. The Chief Justice, (with whom Gotterson JA agreed) held that the sentence was appropriate, and upheld the trial judge’s findings in relation to the brutality of the act.

However, Holmes JA dissented and was of the view that the sentence should be reduced to 5 years with the non-parole period shortened. Her Honour’s judgment contains very useful summaries of all comparable cases, (see [17]-[32]). Holmes JA noted factors including that this was a single incident of a short duration, and was not a ‘protracted exercise in humiliation’ (at [33]). There was no forced entry or weapons used. Her Honour also noted that the, ‘offence did not occur in a context of fear or intimidation’, as the relationship was still on foot. Holmes JA was of the view that the nature of the relationship made these circumstances distinguishable from rapes performed by strangers (See at [34]). It was also noted that the victim was, ‘a strong minded young woman who was left humiliated and angry by what occurred, but not terrified’ and, ‘There was no evidence of lasting psychological harm’.