

***R v RAP* [2014] QCA 228 (11 September 2014) - Queensland Court of Appeal**

‘Damaging property’ – ‘Deterrence’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Unlawful assault causing bodily harm’

Charge/s: Unlawful assault causing bodily harm, unlawfully damaging property.

Appeal Type: Appeal against sentence.

Facts: The appellant pleaded guilty to unlawfully assaulting his wife, causing her bodily harm and unlawfully damaging property. The appellant had a relevant criminal history involving a breach of a domestic violence order. However, this was effectively ignored by the sentencing judge. It is unclear whether at the time of the offences, there was a current or lapsed protection order against the appellant in favour of his wife. In mitigation, the sentencing judge considered a psychiatrist’s report indicating that at the time of the incident, the appellant was likely suffering from, ‘a major depressive episode and, probably, a form of alcohol dependence’. There was also a report from a psychologist who had treated the appellant before the offences and diagnosed him with, ‘an acute, moderate to severe adjustment disorder with mixed anxiety depressed moods at that time.’ A later review by that psychologist indicated he suffered a ‘chronic and mild adjustment disorder with anxiety’ and a year later ‘a mild borderline adjustment disorder’ was diagnosed. He was sentenced for the assault charge to two years imprisonment, suspended after eight months with an operational period of 2.5 years. He was sentenced to two months imprisonment for the property damage charge to be served concurrently.

Issue/s: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. The couple had previously separated, and the incident arose when the appellant returned to the matrimonial home. The complainant’s injuries were significant and she was in fear of her life during the attack. Wilson J (with whom McMurdo P and Fraser JA agreed) at [39] – [46] provided a useful summary of comparable cases. The Court held that a serious assault in the domestic context warrants imprisonment for two years or more. The suspension imposed was a correct application of the mitigating factors, and the serious nature of the violence.