

***R v Francis* [2014] QCA 258 (14 October 2014) – Queensland Court of Appeal**

‘Arson’ – ‘Breach of domestic violence order’ – ‘Damaging property’ – ‘Deterrence’ – ‘Fresh evidence’ – ‘Mitigating factors’ – ‘Sentencing’ – ‘Separation’

Charge/s: Arson.

Appeal Type: Appeal against conviction and sentence.

Facts: The arson was targeted at the appellant’s ex-wife’s new partner’s mother’s car. The offence constituted a breach of a domestic violence order (See further at [3]-[18]).

Issue/s: *Appeal against conviction*: Whether the verdict was unreasonable and not supported by the evidence, and whether the appellant could adduce further evidence not led at trial.

Appeal against sentence: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal against conviction was dismissed. McMurdo P noted that while the case was circumstantial, it was strong, and a guilty verdict was open to the jury. The application to adduce further evidence was also dismissed. The court held that while an affidavit from the appellant’s former partner was somewhat inconsistent with her evidence at trial, there was no significant possibility that the jury would have acquitted him on this basis. However, the appeal against sentence was allowed, reducing the head sentence from 4.5 to 4 years. Defence counsel submitted that the sentence was excessive for arson of a car rather than a house, while the prosecution submitted that it was a flagrant breach of a domestic violence order and general deterrence was necessary for an arson committed as a jealous rage due to a relationship breakdown. McMurdo P held that the sentence was manifestly excessive. The trial judge did not take into account pre-sentence custody, and the appellant only had a minor criminal history prior to this offending.