

***R v Rowe* [2011] QCA 372 (16 December 2011) – Queensland Court of Appeal**

‘Assault occasioning bodily harm’ – ‘Burglary with violence’ – ‘Common assault’ – ‘Damaging property’ – ‘Exposing a child’ – ‘Following, harassing, monitoring’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Stalking’ – ‘Wilful damage’

Charge/s: Stalking with violence, burglary with violence, assault occasioning bodily harm, common assault and wilful damage.

Appeal Type: Application for leave to appeal against sentence.

Facts: The appellant had been in a relationship with the complainant for 6 years and had one child. The relationship ended, at which point the stalking began via telephone and text messages. There had been some conflict in the relationship about the care of the child. He broke into her home, demanded to see her phone and punched her on the head multiple times. He pushed a lighted cigarette on her leg, causing burns. He threatened to kill her. He tackled her to the ground to prevent her from seeking help and punched her again multiple times. He drove her to the hospital after she had cleaned up at his request. He yelled and threatened her while in the car, drove dangerously, and backhanded her to the side of her face. All of this occurred in front of their two year old child. Once the complainant was released from hospital he attended her workplace and caused significant damage to her car. He had a criminal history, including previous break and enter and assault occasioning bodily harm offences. The sentencing judge noted that the stalking was not prolonged, but it was very intense and violent. It was also noted that the child and the complainant must have been terrified.

The applicant pleaded guilty to the above offences, and was sentenced to three years’ imprisonment for stalking with violence, two years’ imprisonment for burglary with violence and assault occasioning bodily harm and 12 months’ imprisonment for common assault and wilful damage. The sentences were to be served concurrently. He was on parole at the time for a prior violent offence. This resulted in a head sentence of three years which was cumulative on an existing term of three years imprisonment, with parole eligibility set at one year after the cumulative term had been served.

Issue/s: Whether the sentence was manifestly excessive.

Decision and Reasoning: Leave to appeal was refused. The applicant submitted that as the head sentence was reduced for the totality principle, the sentencing judge must have used a starting point of over three years which was not consistent with the comparable authorities. This was rejected. While the offending was short, it was intense, and was accompanied by actual and threatened violence, in the presence of a terrified child. The applicant's stalking was more serious than in any of the relevant comparable authorities, and a head sentence of three years was appropriate given the circumstances of the offending and the appellant's history, including that he was on parole for prior offences. The parole eligibility date was also found to be appropriate, given the offender was already subject to an existing term of imprisonment.