

***R v Millar* [2002] QCA 382 (25 September 2002) – Queensland Court of Appeal**

‘Following, harassing, monitoring’ – ‘Irrelevant considerations’ – ‘Mitigating factors’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Stalking’ – ‘Verbal abuse’

Charge/s: Stalking with circumstances of aggravation, common assault, and dangerous operation of a motor vehicle.

Appeal type: Application for leave to appeal against sentence.

Facts: The applicant was in a relationship with the complainant for nine months. They then lived together as a married couple for two weeks until the complainant moved out due to physical and verbal abuse by the applicant. The complainant indicated that she wished to cease all contact with the applicant. There was a domestic violence order in place, which was subsequently breached by the applicant. The stalking (committed when the order was in place) ‘involved menacing telephone calls, banging on her door, threats and letters and other items left at her residence culminating in the applicant’s attempting to run the complainant off the road during the day’. This caused the complainant to veer to the wrong side of a busy road. He then drove his car into hers and assaulted an off duty police officer who was trying to help the complainant. The applicant’s criminal history was comprised of dishonesty offences which had resulted in prison terms. Concurrent sentences of two years imprisonment (with the full activation of an unrelated nine month suspended sentence) were imposed. The complainant indicated that she was still in fear for her safety.

Issue/s: Whether the sentence was manifestly excessive.

Decision and Reasoning: Leave was refused. The applicant submitted, *inter alia* that his criminal history was confined to dishonesty offences, he was young and a psychological report indicated he was remorseful. He stressed that the comparable decisions before the Court concerned situations where there was no emotional relationship between the complainant and the offender, so that in his case, a more lenient penalty should have been imposed. This argument was rejected. de Jersey CJ (with whom Helman J and Jones J agreed) held – ‘I would say for my part that that (the presence of an emotional relationship between the offender and the victim) is not a feature which should necessarily lead to a lower penalty being imposed, where the stalking follows the break-up of an emotional relationship.’