

***R v Stephens & Attorney-General of Queensland* [1994] QCA 507 (28 November 1994) – Queensland Court of Appeal**

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

Charge/s: Rape, indecent assault.

Appeal Type: Appeal against sentence.

Facts: The respondent was convicted of two counts of rape and one count of indecent assault of his de facto partner. It is unclear whether at the time of the offences, there was a current or lapsed protection order against the respondent in favour of the victim. He was sentenced to three years imprisonment with a recommendation for parole eligibility after six months. The context of the relationship was one of intimidation and fear.

Issue/s: Whether the sentence was manifestly inadequate.

Decision and Reasoning: The Court upheld the appeal, holding that while the trial judge was correct to take into account the respondent’s youth, irrelevant considerations were taken into account. The sentence was increased to five years imprisonment with a recommendation for parole eligibility after two years. The Court found that the primary judge erred by approaching rapes occurring within an existing relationship in a more lenient way. The Court stated that generally, it is not correct to approach rapes occurring in existing relationships more leniently. There may be circumstances where the existence of such a relationship may be relevant to the sentence imposed due to the offender’s state of mind, in that, ‘there may be greater scope for a genuine belief on the part of the man that the woman has or is likely to consent to sexual intercourse. And where that mistake is honest but unreasonable, it may be relevant to take it into account in sentencing the offender.’ (Note: This statement has been both distinguished and applied in subsequent Court of Appeal decisions - In *R v Conway* [2012] QCA 142 , Henry J (with whom Muir JA and McMurdo P agreed) stated in obiter that *Stephens* is ‘of limited utility given its age’. However, the case has been discussed after *Conway* such as in *R v Postchild* [2013] QCA 227.) In *Stephens* itself, the Court of Appeal found that the circumstances of the relationship in that case did not give reason to distinguish it from a rape between strangers. There was a high degree of violence and the complainant made it clear through her protests and tears that she was not consenting.