

***R v. Major; ex parte Attorney-General (Qld)* [2011] QCA 210 (30 August 2011) – Queensland Court of Appeal**

‘Assault occasioning bodily harm’ – ‘Breach of domestic violence order’ – ‘Denunciation’ – ‘Deterrence’ – ‘Impact on children’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Social abuse’ – ‘Verbal abuse’ – ‘Wounding’

Charge/s: Seven counts of assault occasioning bodily harm, threatening violence at night, wounding, assault occasioning bodily harm while armed and various summary offences.

Appeal Type: Appeal against sentence.

Facts: The respondent pleaded guilty to the above charges. The offending included 8 episodes of domestic violence over a three year period, involving severe physical abuse such as punching, cutting off the tip of the victim’s finger, choking, wrestling, smashing objects on the victim’s head and verbal abuse. There were lasting physical impacts on the victim including nerve injuries, loss of sensation to her finger-tip and depression and anxiety. He was sentenced for the unlawful wounding offence to 3 years’ imprisonment, suspended after 741 days (the period already served) with an operational period of 5 years. He was sentenced to 2 years imprisonment for the remaining counts.

Issue/s: Whether the sentence was manifestly inadequate.

Decision and Reasoning: The appeal was upheld, with the Court holding that the original sentence was manifestly inadequate. The Court noted that when concurrent sentences are imposed, it is important to ensure that the primary term adequately reflects the nature of each individual feature of the offending. This was not reflected in the trial judge’s sentence. The mitigating factors were not particularly powerful. For example, the absence of any prior history of violence was outweighed by the prolonged duration of the offences. The fact that the respondent was not subject to a domestic violence order was not a mitigating factor but merely a distinguishing feature from analogous cases. The Court noted that the original sentence should have been in the range of six to eight years. However, given that the defendant had commenced rehabilitation, it was deemed that imposing such a sentence on appeal would be inappropriate. Also, the respondent had no prior history of violence, and was not subject to any court order at the time of the offending. Nevertheless, the sentence was increased to 5 years with the same suspension period. Probation was added for another count.

See in particular the useful remarks of McMurdo P at [53], regarding the considerations the courts should take into account for sentencing domestic violence offences – *‘The dreadful effects of prolonged episodes of domestic violence are notorious...Deterrence, both personal and general, is an important factor in sentencing in domestic violence cases. So too is denunciation. The community through the courts seeks sentences which show the public disapprobation of such conduct. The effects of domestic violence go beyond the trauma suffered by victims, survivors and their children to their extended families, and friends. Domestic violence also detrimentally affects the wider community, causing lost economic productivity and added financial strain to community funded social security and health systems.’*