

***R v Bell & Anor; ex parte Attorney-General (Qld)* [1994] QCA 220 (20 June 1994) – Queensland Court of Appeal**

‘Aboriginal and Torres Strait Islander people’ – ‘Mitigating factors’ – ‘People living in regional, rural and remote communities’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Unlawful wounding’ – ‘Victim’

Charge/s: Unlawful Wounding.

Appeal Type: Appeal against sentence.

Facts: The respondent, an Aboriginal man, was intoxicated and following an argument with the complainant (his de facto partner), stabbed her in the thigh, punched her in the mouth twice and continued to shout and threaten her. He pleaded guilty to unlawful wounding and was sentenced to two years’ probation and ordered to perform 120 hours of community service, with no conviction recorded. It is unclear whether at the time of the offence, there was a current or lapsed protection order against the respondent in favour of the complainant. The complainant was supportive of the respondent, but did not wish to see him in prison.

Issue/s: Whether the sentence was manifestly inadequate.

Decision and Reasoning: The appeal was upheld. The respondent was re-sentenced to a suspended period of imprisonment for one year, with an operational period of two years. A conviction was recorded. The Court of Appeal imposed a sentence of imprisonment of 1 year despite the wishes of the complainant, the fact that the relationship had resumed and the fact the respondent had returned to his community and returned to work. However, the operational period of the sentence was suspended. Fitzgerald P (at 6) made the following comments relating to how social and economic disadvantage (both generally and in remote Aboriginal and Torres Strait Islander communities) is relevant when sentencing domestic violence offenders –

“It was right for (the trial judge) to have regard to the respondent’s disadvantages and open to him, as a result, to sentence the respondent as leniently as the circumstances of his offence admitted. However, such disadvantages do not justify or excuse violence against women or, to take another example, abuse of children. Women and children who live in deprived communities or circumstances should not also be deprived of the law’s protection. A proposition that such offences should not be adequately penalised because of disadvantages experienced by a group of which the offender is a member is not one which is acceptable to the general community or one which we would expect to be accepted by the particular community of which an offender and complainant are members.”