

***R v James* [2012] QCA 256 (24 September 2012) – Queensland Court of Appeal**

‘Breach of domestic violence order’ – ‘Deterrence’ – ‘Physical violence and harm’ – ‘Plea of guilty’ – ‘Sentencing’

Charge/s: Breach of domestic violence order.

Appeal Type: Application for leave to appeal against sentence.

Facts: The complainant (the appellant’s de facto partner) was receiving treatment at a hospital necessitated by an earlier assault by the appellant. The appellant then waited outside a toilet door at the hospital and punched her in the face which caused pain, discomfort and swelling. He was sentenced to 9 months imprisonment for contravening a domestic violence order. He had a long criminal history including six prior breaches of domestic violence orders and convictions for other offences.

Issue/s: Whether the sentence was manifestly inadequate.

Decision and Reasoning: Leave to appeal was refused, with the Court upholding the 9 month sentence. The maximum penalty for breaching a domestic violence order applicable at the time was 12 months imprisonment. This was later increased to two years (three years if the accused has prior convictions). Also, Henry J observed that there ought not exist an expectation that a one third discount to the head sentence will be applied where there is a plea of guilty, although such an outcome may be common (Holmes JA and McMurdo P agreed). McMurdo P (Holmes JA agreed) found that a further exacerbating feature was that the offence occurred in a hospital where the victim and other patients should be entitled to freedom from exposure to such violence.