

***R v Sauvao* [2006] QCA 331 (1 September 2006) – Queensland Court of Appeal**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘Attempted murder’ – ‘Breach of domestic violence order’ – ‘Community protection’ – ‘Mitigating factors’ – ‘Physical violence and harm’ – ‘Separation’ – ‘Serious violent offence declaration’

Charge/s: Attempted murder, breach of domestic violence order.

Appeal Type: Application for leave to appeal against sentence.

Facts: The applicant pleaded guilty to the attempted murder of his de facto wife and to a breach of a domestic violence order. The couple had separated. The complainant initially obtained an apprehended violence order in 2003 in New South Wales, which was then registered in Queensland upon moving to that state. In May 2005, at a railway station, the applicant attempted to stab the complainant with a small knife. The knife snapped on the complainant’s jacket, causing her no harm. He continued to punch and kick her, and hit her head into a chair and a pole. He was then stopped by bystanders. He admitted that if they had not intervened he would have persevered. He surrendered to police and made full admissions. He gave a full account and added details to his disadvantage. It is unlikely without his interview that anyone would have known about the use of the knife (the complainant herself was not aware of it), or about the applicant’s intention to kill as opposed to assault the complainant. The applicant’s only relevant criminal history was a breach of the domestic violence order in the preceding year, when he attended the house of the complainant. The applicant was sentenced to nine years’ imprisonment. A ‘serious violent offence’ (SVO) declaration was made.

Issue/s: Whether the ‘serious violent offence’ declaration should have been made.

Decision and Reasoning: Firstly, the Court held that the head sentence was 'unremarkable'. However, Holmes JA (with whom McPherson JA and Douglas J agreed) upheld the appeal. The applicant showed profound and sincere remorse and the case involved 'unusual' mitigating factors. The Court found the SVO declaration should not have been made for two reasons. Firstly, there was nothing in the offence itself in terms of, 'duration, its force or its consequences which took it out of the ordinary run of cases'. The offender had almost no criminal history. There was no element of community protection as the likelihood of repetition was remote. Secondly, he had cooperated utterly. However, the only sentence reduction he received for this cooperation and remorse was 9 and a half months (the difference between the nine year sentence with an SVO declaration, and a 10 year sentence). This was a minor reduction in the circumstances and made the SVO declaration manifestly excessive.