

***R v Aplin* [2014] QCA 332 (16 December 2014) – Queensland Court of Appeal**

‘Aboriginal and Torres Strait Islander people’ – ‘Community protection’ – ‘General deterrence’ – ‘Grievous bodily harm’ – ‘Mitigating factors’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Serious violent offence declaration’

Charge/s: Grievous Bodily Harm.

Appeal Type: Application for leave to appeal against sentence.

Facts: The applicant, an Aboriginal and Torres Strait Islander man, caused catastrophic harm to the 21 year old complainant, with whom he had recently commenced a relationship. She was in a ‘vegetative state’ at the time of trial. He made full admissions to police. He sought to have evidence of these admissions excluded, which was refused. He then pleaded guilty. The applicant had a long history of domestic violence including multiple breaches of domestic violence orders. The sentencing judge mentioned the need to have regard to this history, as well as the extent of the injuries and the need for deterrence (see at [12]). He was sentenced to 9 years’ imprisonment and a ‘serious violent offence’ declaration was made.

Issue/s: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. The applicant submitted that various mitigating factors applied including that no weapon was involved, there was no premeditation, he attempted to administer aid, requested that an ambulance be called and there was a degree of provocation. He also submitted that the sentencing judge was in error in using a 10 year head sentence as a starting point. Fraser JA (with whom McMurdo P and Morrison JA agreed) held that there was nothing to indicate the primary judge overlooked these factors or the applicant’s disadvantaged background. Indeed, given the ‘seriousness of the offence, the catastrophic consequences for the complainant, and the applicant’s bad history of violent offending in broadly similar circumstances’ (See at [16]), it was open to the primary judge to attach relatively light weight to the mitigating factors. Furthermore, the trial judge was correct in using a previous decision with a head sentence of 10 years for ‘guidance’. While the Court acknowledged that this sentence was severe given the maximum penalty, the guilty plea, the offender’s age and other mitigating circumstances, it was justified for this ‘extreme example of domestic violence by a repeat offender’, ([26]) where general deterrence and community protection were very relevant.