

R v AN [2003] QCA 349 (11 August 2003) – Queensland Court of Appeal

‘Cumulative sentencing’ – ‘Following, harassing, monitoring’ – ‘Sentencing’ – ‘Stalking’ – ‘Totality’

Charge/s: Stalking with circumstances of aggravation.

Appeal Type: Appeal against sentence.

Facts: The applicant met the complainant while on remand and they lived together for a short period until the relationship broke down. The stalking occurred over the phone and included death threats and threats to the complainant’s children. There was a psychologist’s report before the trial judge, indicating that the applicant presented with a borderline personality disorder and would not be able to alter his behaviour without counselling. The applicant had a long criminal history of stalking, stealing, breaches of domestic violence orders and other offences. The applicant pleaded guilty to the stalking of the complainant with circumstances of aggravation and was sentenced to three years’ imprisonment.

Issue/s: Whether the three year sentence offended the totality principle and was therefore manifestly excessive.

Decision and Reasoning: The Court allowed the appeal, reducing the sentence to two years. The effect of the conviction was that an existing suspended sentence for other offences was activated. The applicant had also been sentenced previously for common assault and wilful damage charges. The effect of this was that the applicant was liable to four years and two months imprisonment, becoming eligible for parole at eighteen months. There was no error in the cumulative term being imposed. However, the Court did conclude that the three year term offended the totality principle. In citing comparable cases, the Court found that a three year sentence is at the top of the range for offending of this nature. Lesser sentences were imposed in comparable cases which involved more serious stalking in the domestic context, such as surveillance, letters and attempts to run the victim off the road. Such conduct was not present in this case.