

## ***R v Sollitt* [2019] QCA 44 (19 February 2019) – Queensland Court of Appeal**

‘Breach protection order’ – ‘Children’ – ‘Evidence’ – ‘Evidence issues’ – ‘Factors affecting risk’ – ‘Physical violence and harm’ – ‘Protection order’ – ‘Sexual and reproductive abuse’

Charges: Assault occasioning bodily harm x 2; contravention of a domestic violence order; rape.

Case type: Appeal against conviction. Application for an extension of time.

Facts: The appellant was charged with a number of offences against the complainant, his then de facto partner. The complainant’s daughter and son gave evidence of the events ([33]-[40]). The complainant herself gave evidence asserting that she was in a ‘domestic violence cycle’ ([23]). After a trial, the appellant was convicted of two counts of assault occasioning bodily harm (domestic violence offence) and contravention of a domestic violence order. The jury acquitted the appellant of a charge of torture and was unable to reach a verdict in relation to a charge of rape. After a retrial on the charge of rape, the appellant was convicted and sentenced to seven years’ imprisonment ([1]-[4]). The appellant submitted that consent was given by the complainant and that sexual intercourse in the context of the violent circumstances was not a departure from the usual dynamics of the relationship. The Crown contended that if there was any ostensible consent by the complainant, it was induced by force and invalid at law, and that the appellant could not have held a mistake of fact as to consent ([46]). The appellant appealed against his conviction of rape on the grounds that the jury’s verdict was unreasonable and unsafe, and there was a miscarriage of justice, resulting from the trial judge’s misdirection of the jury on the defence of mistake of fact ([5]).

Further, the appellant sought an extension of time in which to appeal his sentence ([6]). The applicant’s explanation for delay in filing the application for leave to appeal against sentence was that his lawyer did not provide him with any information about appealing his sentence and that he thought he would be able to get more time ([69]).

Issues: Whether the verdict was unreasonable or insupportable. Whether the appeal should be allowed. The predominant issue at trial was the issue of consent, including a mistake of fact as to the complainant’s consent.

Decision and reasoning: The appeal against conviction was dismissed and the application for an extension of time was refused.

Appeal against conviction:

In relation to the appellant's contention that the jury's verdict was unreasonable or cannot be supported by the evidence, the Court considered whether it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty based on the whole of the evidence. In determining this question, the Court undertook its own independent assessment of the evidence, assessing its sufficiency and quality ([45]). As to the issue of consent, the Court held that it was entirely open to a jury to find that the complainant gave an honest and reliable account, and it was not surprising that the jury were satisfied that the prosecution had negated any mistake of fact as to consent on the part of the appellant. There was no evidence from the appellant that he held an honest but mistaken belief as to voluntary consent. Moreover, the appellant's conduct immediately following the offence and his admission to the complainant's daughter undermined any assertion that the appellant honestly and reasonably believed that the complainant consented ([51]-[52]). It was also appropriate for the jury to have regard to the 'ongoing domestic violence in the relationship' and the complainant's continuation of the relationship in considering the issues raised by the case ([53]).

The appellant also made a number of complaints about the trial judge's directions, such as the fact that his Honour used a number of terms interchangeably regarding consent ([58]) and, in giving his final direction on mistake of fact, failed to give a repeat direction on the standard of proof required of the prosecution to negate the defence of mistake of fact beyond reasonable doubt ([64]). The trial judge's use of the words other than 'consent' was not found to constitute a miscarriage of justice ([60]). Further, there was no error in failing to specifically mention the standard of proof in the final redirection, as it was given in conjunction with the aide memoire, which itself identified the requisite standard of proof ([66]).

#### Extension of time:

In considering whether an extension of time should be granted, the court examined whether there was any good reason to account for the delay and considered whether it was in the interests of justice to grant the extension ([68]). The Court was not persuaded that there was any good reason for the delay to grant an extension ([69]). Moreover, the applicant was 43 years old at the time of the sentence and had repeatedly been convicted of offences of violence, particularly in a domestic setting. These factors supported the sentence imposed and indicated that the sentence was not manifestly excessive ([70]).