

***R v Wallace* [2015] QCA 62 (21 April 2015) – Queensland Court of Appeal**

‘Emotional abuse’ – ‘Following harassing, monitoring’ – ‘Fraud’ – ‘Fresh evidence’ – ‘Mitigating factors’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Verbal abuse’ – ‘Where the offender is also a victim’

Charge/s: Six counts of fraud.

Appeal Type: Application for leave to appeal against sentence.

Facts: The applicant pleaded guilty at trial to six counts of fraud. See at [3]-[11]. It is unclear whether at the time of the offences, there was a current or lapsed protection order in place against the applicant’s ex-husband in favour of the applicant or other parties.

Issue/s: Whether the applicant could adduce fresh evidence not led at the original sentencing hearing.

Decision and Reasoning: The fresh evidence involved long term domestic violence that the applicant suffered from her ex-husband, including controlling behaviour such as taking the applicant’s phone and keys to prevent her from seeking help, threatening her children, stealing money from her business, and severe physical violence. It also included evidence from a psychiatrist detailing the effect of the abuse on her, to the extent that she did not fully understand the repercussions of her offending. This was found to be consistent with what has come to be known as the ‘battered person’s syndrome’. The appeal was allowed and the evidence was admitted. The head sentence was reduced by one year.

McMurdo P, (with whom Gotterson JA and Douglas J agreed) noted that lawyers acting for clients charged with criminal offences who claim to be the victim of domestic violence should take such claims very seriously to determine the relevance to their client’s alleged offending. They should then put such evidence before the primary court either as a defence, or in sentence mitigation.

See in particular the following remarks of McMurdo P at [37] -

'... The further evidence led in this application established that at the time of the offending the applicant was in an abusive, exploitive relationship which impaired her capacity to realise the full repercussions of her fraudulent behaviour and her ability to formulate a mature response to her financial and personal difficulties as she continued to take more and more money from the nursing home in the impossible hope that she would eventually repay it. As Dr Schramm (a psychiatrist) explained, she was not acting completely rationally. She was exhibiting behavioural disturbances following her prolonged and significant physical and emotional abuse, commonly known as "battered persons syndrome." This took her offending behaviour out of the worst category of fraudulent offending in which the sentencing judge placed it. The further evidence raises the possibility that some other sentence than that imposed may be warranted; if so, its exclusion would result in a miscarriage of justice. '