

***R v Martin* [2014] QCA 80 (14 April 2014) – Queensland Court of Appeal**

‘Assault occasioning bodily harm’ – ‘Breach of domestic violence order’ – ‘Consistency of sentence with other orders’ – ‘Costs’ – ‘Following, harassing, monitoring’ – ‘Stalking’ – ‘Systems abuse’ – ‘Using carriage service’

Charge/s: 41 offences, including stalking, 26 counts of breaches of domestic violence orders, two counts of assault occasioning bodily harm, five counts of using a carriage service to make a threat to kill and six counts of using a carriage service to menace or harass.

Appeal Type: Application for leave to appeal against sentence.

Facts: The applicant pleaded guilty in the Magistrates’ Court to all offences. The stalking was committed against the applicant’s ex-partner. A head sentence of two years imprisonment was imposed in the Magistrates’ Court, with all sentences to be served concurrently. The applicant was also placed on a domestic violence order in favour of his ex-partner for 5 years. The Magistrate made adverse findings in relation to the applicant’s offending, his lack of remorse and the real risk of him re-offending. Mitigating factors included pleas of guilty and completion of a domestic abuse program while in custody. His parole release date was set after he had served one third of the head sentence, taking into account pre-sentence custody.

Issue/s: Whether the remaining period on parole should be substituted with a suspended sentence, due to the comparative administrative ease of a suspended sentence in obtaining permission to leave the state.

Decision and Reasoning: Leave to appeal was refused. A previous appeal to the District Court was struck out due to the applicant’s uncooperative nature, and the many opportunities that were given to him through adjournments to allow him to appear personally in Court, as well as the primary judge’s finding of fact that he had misled the Court. The Court found that the primary judge acted appropriately.