***R v ABE* [2019] QCA 83 (14 May 2019) – Queensland Court of Appeal**

'Children' – 'History of abuse of accused' – 'People with disability and impairment' – 'Physical violence and harm' – 'Primary carer' – 'Stalking'

Charges: Stalking x 1 (Count 1); malicious act with intent x 1 (Count 2); grievous bodily harm x 1 (Count 3).

Case type: Sentence application and appeal.

Facts: The applicant experienced domestic violence from her husband (the complainant) from 2005. Cross-protection orders prohibited them from living together. The applicant arrived at the matrimonial residence with two children of the marriage. Her husband was residing at that residence. That night, the complainant sustained 4 stab wounds at the hands of the applicant. He also suffered 2 lacerations to the right hand that caused tendon and nerve damage. These events constituted Counts 2 and 3. The applicant and complainant were separated, and their severely disabled daughter, AA, was in hospital at the time of the offending. The applicant is her primary carer. The complainant for Count 1 was a family friend who was having an affair with the complainant.

The applicant pleaded guilty to the charges. She was sentenced to four months' imprisonment for Count 1, and six years' imprisonment with a parole eligibility date fixed after serving 15 months in custody for each of the other counts.

As the sentence for the stalking was already served, the purpose of the application was to review the sentence imposed for the other counts. The applicant applied for leave to appeal against her sentence on the basis that it was manifestly excessive and that the sentencing judge erred in failing to find that the circumstances of AA were exceptional and therefore justified a non-custodial sentence. The applicant also applied for leave to adduce further evidence, namely an affidavit from her adult daughter which detailed the care arrangements for AA since the applicant went into custody.

Issue: Whether the sentence was manifestly excessive; Whether the sentencing judge erred in failing to take into account the applicant's disabled daughter's needs.

Held: The appeal against the sentence was allowed, and the sentence was varied. Mullins J noted that the offences were committed in circumstances where the applicant was AA's primary carer. When imposing an appropriate sentence, a balancing exercise needs to be undertaken which fulfils the purposes of 'sentencing for serious offending involving premeditated use of a weapon to inflict injury in a domestic setting, but also [to] allow for the mitigating circumstances and particularly the applicant's role in relation to the special needs of AA'. The period served in custody should be sufficiently long to reflect appropriate punishment for the crime, without separating the applicant from AA for any longer than is necessary ([47]). Her Honour held that, in light of AA's needs, the custodial component of the sentence should have been reduced by a further period of 6 months. Therefore, the sentence was manifestly excessive to the extent of fixing the parole eligibility date after 15 months in custody rather than after a period of 9 months ([48]). Davis J and Sofronoff P agreed with the reasons of Mullins J. Citing *R v Chong; ex parte Attorney-General (Qld)* [2008] QCA 22, Davis J noted that although hardship to an offender's family resulting from the offender's imprisonment cannot override all other sentencing considerations, there will be some cases where family hardship results in a substantial reduction either in the sentence, or the period to be served before parole eligibility even where the offending is serious ([52]).

The Court also refused the application for leave to adduce further evidence because it was neither necessary nor expedient, in the interests of justice, to receive further affidavits of the adult daughter ([37]).