

***TND v Queensland Police Service* [2014] QDC 154 (18 July 2014) – Queensland District Court**

‘Assault’ – ‘Breach of domestic violence order’ – ‘Deterrence’ – ‘People living in regional, rural and remote communities’ – ‘Physical violence and harm’ – ‘Sentencing’

Charges: Breach of domestic violence order, assault of a police officer.

Appeal Type: Appeal against sentence.

Facts: The appellant and the aggrieved were drinking, then returned home (in the Normanton district). Following a dispute, the appellant became agitated and punched the aggrieved, causing a minor injury. After police were called, officers were forced to use capsicum spray to subdue the appellant. He continued to threaten violence after his arrest. He had a long criminal history including many property and drug offences. He had one prior conviction for breaching a domestic violence order, for which he was fined \$100. He submitted this matter was not one of ‘significant gravity’ (See at [9]). The appellant submitted in the Magistrates’ Court that the relationship was not one characterised by violence. Following pleading guilty, he was sentenced to six months’ imprisonment with immediate parole release for the breach offence. He was sentenced to one month imprisonment wholly suspended for an operational period of nine months for the assault offence. In his sentencing remarks, the Magistrate referred to crime statistics and noted the prevalence of breaches of domestic violence orders and offences against police in the Normanton district, which necessitated a strong element of general deterrence in sentencing.

Issue: Whether the sentence for the breach offence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. The Court acknowledged that the Magistrate did err by not properly indicating how he took into account of the plea of guilty, and by using the statistics, which were found to not be reliable. Mitigating factors included the appellant’s youth and his early plea of guilty. The relationship was long-term and was not characterised by actual violence. His criminal history, while relevant, was minor. However, at [35] Bradley DCJ emphasised that domestic violence involving psychological violence is a serious issue and the appellant did cause some injury to the aggrieved. He had been recently convicted of breaching a protection order and general and specific deterrence were important. He was subject to various court orders when he committed the offence. The maximum penalty was three years. As such, the sentence was held to be appropriate.