***NAS v QPS* [2017] QDC 173 (21 June 2017) – Queensland District Court**

'Appeal against sentence' – 'Partially suspended sentence' – 'People from culturally and linguistically diverse backgrounds'

Charges: Assault occasioning bodily harm whilst armed with an instrument x 1.

Appeal type: Appeal against sentence.

Facts: The appellant and complainant were married and had a 5-month-old baby. The appellant was from Papua New Guinea and was staying in Australia on a tourist visa ([2]). The offence occurred when the appellant became angry and threw an apple at the complainant, struck her with a broomstick, and struck the back of her head while she was holding the baby ([3]).

The appellant pleaded guilty on the following day and was immediately sentenced to 15 months' imprisonment, suspended after serving a period of 2 months for an operational period of 3 years ([1]). He was represented by a duty lawyer ([5]).

The magistrate stated that the 'only' appropriate sentence was 15 months' imprisonment ([11]).

Issues: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was allowed.

Judge Reid held that the Magistrate erred by stating that 15 months was the 'only appropriate term' ([23]). Comparable cases, most relevantly *R v Pierpoint* [2001] QCA 493, indicated that a lesser sentence was also open ([25]).

On one hand, the offending was serious: it was somewhat protracted, committed against a female partner, and in the presence of a young child. On the other hand, the appellant had no criminal history, the appellant had ceased hitting the complainant before the police arrived, and there was no previous domestic violence order in place ([26]-[27]).

The appellant was re-sentenced to 9 months' imprisonment, to be suspended in 10 days, after the appellant had completed serving the sentence of 2 months imprisonment ([30]). Had a pre-sentence custody certificate been provided, a wholly suspended sentence could have been imposed ([30]).