Caddies v Birchell **[2018] QDC 180 (4 September 2018) – Queensland District Court**

'Assault' – 'Bail' – 'Extra-curial punishment' – 'Physical violence and harm' – 'Sentencing'

Charges: Assault occasioning bodily harm x 1.

Appeal type: Appeal against sentence.

Facts: The appellant was convicted of assault occasioning bodily harm (domestic violence offence), following a two-day trial. Prior to sentencing, he lodged an appeal against conviction. Subsequently, the Magistrate sentenced the appellant to 18 months' imprisonment on the basis that the appellant serve one half of that term in prison. The appellant appealed against this sentence and was granted bail pending the hearing. The grounds of appeal included that the sentence was manifestly excessive and that the Magistrate failed to (1) identify whether he took into account the extra-curial punishment the appellant received during the offence, in particular the broken foot caused by the complainant; (2) indicate how that extra-curial punishment was taken into account in the sentencing process (if he did take it into account); and (3) consider the appellant's offer of compensation.

Issues: Whether the sentence was manifestly excessive; Whether the sentencing discretion should be re-exercised to take into account the appellant's injuries; Whether the appellant's injuries are capable of constituting extra-curial punishment; Whether the sentencing discretion should be re-exercised to take into account the offer of compensation.

Decision and reasoning: The Court was satisfied that the errors identified vitiated the sentence imposed by the Magistrate. There was no explanation as to the Magistrate's consideration of extra-curial punishment and how it was taken into consideration with regard to the penalty that was imposed. There was also no explanation as to the basis upon which the Magistrate found that there was a complete lack of remorse. The Court concluded that the Magistrate fell into error when he determined that a sentence of 18 months' imprisonment was the appropriate penalty. Having referred to comparable cases, such as *R v RAP* [2014] QCA 228, the Court held that the imprisonment term of 18 months was manifestly excessive. In *R v RAP*, Justice Wilson held that, in the case of a serious assault in a domestic setting, a sentence of imprisonment for two years or more is, 'plainly within the proper sentencing range' and 'far from excessive'. Similarities between the two cases include the ages of the appellants, their prior criminal records and their otherwise good character ([47]). Although the complainants in both cases suffered physical and psychological injuries, the injuries sustained by the complainant in *RAP* were more significant. *RAP* also involved a plea of guilty, whilst this was a matter determined following two days of hearing. Reference was also made to a considerable number of cases with regard to the range that should be considered in relation to a penalty to be imposed, such as *R v Pierpoint* [2001] QCA 493, *R v Johnson* [2002] QCA 283, *R v Von Pein* [2001] QCA 385, *R v Fairbrother; ex parte Attorney-General* [2005] QCA 105, *R v King* [2006] QCA 466, *R v George* [2006] QCA 1 and *R v Roach* [2009] QCA 360. These cases clearly showed the considerable range of penalties and the need for an independent exercise of discretion. In light of the circumstances of this case, the appeal was allowed, the sentences set aside, the hearing adjourned for sentence on a date to be fixed and the bail enlarged.