

***ETB v Commissioner of Police* [2018] QDC 26 (6 March 2018) – Queensland District Court**

‘Aboriginal and torres strait islander people’ – ‘Breach of protection order’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Sentencing - double jeopardy’ – ‘Totality’

Charges: Contravention of domestic violence order (‘DVO’) x 2; Common assault x 1.

Appeal type: Appeal against sentence.

Facts: The appellant and respondent were in a relationship and raised 5 children together ([14]). The first contravention of DVO occurred when the appellant swore at the appellant and threatened to slice his own throat (‘June contravention of DVO’). The second contravention of DVO occurred when the appellant verbally abused the appellant (‘September contravention of DVO’). The aggrieved slapped the appellant and told him to leave. The common assault charge occurred when, in retaliation for the slap, the appellant punched the aggrieved in the head and ear (together, ‘September charges’) (see [10]).

The appellant was sentenced to 3 months’ imprisonment for the June contravention of DVO, 9 months’ imprisonment for the September contravention of DVO, and 9 months’ imprisonment for the common assault ([2]). The magistrate declared 39 days’ pre-sentence custody and set a parole release date after 2 weeks ([4]).

Issues: The appellant appealed on 4 grounds in relation to the September charges (see [7]-[8]):

- > first, that the sentence was manifestly excessive;
- > second, that the sentencing magistrate erred by failing to have proper regard to principles of totality;
- > third, that the sentencing magistrate erred by incorrectly applying relevant case law; and
- > fourth, that the magistrate erred by contravening s 16 of the *Criminal Code 1999* (Qld) by imposing imprisonment on each of the offences of contravention of a domestic violence order and common assault.

Decision and Reasoning: The appeal was allowed.

In relation to the fourth ground of appeal, the Dearden DCJ held that the September charges could be appropriately separated, because the contravention of DVO was in relation to the verbal abuse, and the common assault was in relation to the physical punch ([18]). However, this meant that the respondent conceded that sentence of 9 months for solely verbal conduct was manifestly excessive ([20]). District Judge Dearden considered that the appropriate sentence for the September contravention of DVO should be 3 months ([21]).

The remaining issue was whether the sentence of 9 months imprisonment for the common assault charge was manifestly excessive ([23]). Considering case law and mitigating circumstances (the fact that the verbal abuse did not involve threats to harm the aggrieved and the assault was precipitated by the aggrieved slapping the appellant), Dearden DCJ held that the sentence was manifestly excessive ([23]-[30]). The appellant was re-sentenced to 6 months' imprisonment ([32]).