

***Singh v Queensland Police Service* [2013] QDC 37 (20 February 2013) – Queensland District Court**

‘Aggravating factor’ – ‘Breach of bail condition’ – ‘Breach of domestic violence order’ – ‘Exposing a child’ – ‘Following, harassing, monitoring’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Verbal abuse’

Charge/s: Breach of domestic violence order (2 counts), breach of bail condition.

Appeal Type: Appeal against sentence.

Facts: The appellant pleaded guilty in the Magistrates’ Court to two counts of breaching a domestic violence order. The order prevented him from directly or indirectly contacting the aggrieved. The parties had been in a de facto relationship for five years. The first count involved the appellant standing over the aggrieved, pointing menacingly at her. He was taken into custody and released on bail with a no contact condition. In breach of this condition, he attended her home, yelled insults at her, broke property, head butted an informant and verbally abused her, all in the presence of their children and a witness. The Magistrate acknowledged that the presence of the three young children was a serious aggravating feature. The appellant had a relevant criminal history, including four previous domestic violence convictions committed against the aggrieved. The Prosecutor provided minimal assistance to the Magistrate as to the appropriate sentence. He was sentenced to nine months’ imprisonment followed by two years’ probation for each count, to be served concurrently. He was convicted and not further punished for the breach of bail.

Issue/s: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was initially dismissed. Robertson DCJ commented that it is ‘regrettable’ (see at [7] & [25]) that the prosecutor did not provide the Magistrate with any assistance as to the appropriate sentence. The Court held that these acts were a ‘nasty and prolonged’ (see at [29]) example of domestic violence against a vulnerable complainant, by an offender who had a long history of violence against the same woman. He had previously shown disregard for court orders, and in this case also showed complete disregard for the bail undertaking. The only mitigating factor was the early plea of guilty. While the sentences were ‘severe’, they were not so severe as to amount to an error by the Magistrate.

(The appeal was then re-opened and upheld due to a procedural issue with taking into account the appellant’s prior convictions following the Court of Appeal’s decision in *Miers v Blewett* [2013] QCA 23 (22 February 2013). The requisite notice was not given, so the appellant’s prior convictions could not be taken into account. However, the Legislature has now amended s 47 of the *Justices Act 1886* to ensure that prior convictions can be taken into account in sentencing whether or not notice has been served.)