

***DYN v Queensland Police Service* [2020] QDC 47 (27 March 2020) – Queensland District Court**

‘Appeal against sentence’ – ‘Breach of protection order’ – ‘Children’ – ‘Controlling, jealous, obsessive behaviours’ – ‘Error of law’ – ‘Guilty plea’ – ‘History of abuse’ – ‘Manifestly excessive’ – ‘Persistent menacing conduct’ – ‘Sentencing considerations’ – ‘Separation’ – ‘Threat to kill’

Charges: Contravening a domestic violence order (aggravated offence) x 2.

Case type: Appeal against sentence

Facts: The appellant man pleaded guilty to 2 charges of contravening a domestic violence order (aggravated offence) and was sentenced to 18 months and 12 months imprisonment respectively, to be served concurrently with each other, but cumulative on a term of imprisonment that he was already serving. At the time of the offending, he was separated from the complainant, and was subject to a protection order which required him to be of good behaviour, not to approach the complainant woman within 50m and not to contact her. During their 8-year relationship, they had a child.

Issue: The issues on appeal were whether the sentence imposed was manifestly excessive because the learned magistrate erred by:

- > Placing too much weight on the appellant's criminal history;
- > Failing to properly take into account the appellant's plea of guilty by not setting a parole eligibility date at a point sooner than one half;
- > Miscalculating the setting of the parole eligibility date; and
- > Failing to take into account the principles of totality such that the sentence imposed was proportionate to his offending.

Held: Morzone QC DJC allowed the appeal and substituted the terms of imprisonment with 12 months for Charge 1 and 15 months for Charge 2. The appellant contravened the domestic violence order by texting and calling the complainant excessively, and by engaging in physically intimidatory and aggressive behaviour by going to the complainant's home at night, rushing at her, bashing the window and later making a death threat over the telephone despite police interest. Whilst the offending did not involve physical violence, it was serious in that it involved "persistent menacing conduct in serious breach of the no contact and geographical limiting conditions" of the protection order. His Honour acknowledged the prevalence of domestic violence in the community, and was particularly concerned about the continuation of violence despite police or court intervention by protection orders ([22]-[23]). Further, the appellant's previous convictions for like offences, especially against the complainant, were found to be an aggravating factor as it showed that his attitude of disobeying the law was not isolated ([26]). His Honour therefore held that imprisonment was the necessary punishment, and that 12 and 15 months imprisonment would provide "appropriate moderation according to the sentencing considerations and balancing aspects of specific deterrence, and further rehabilitative processes serving out the sentence within the community under the auspices of parole" ([31]).