

SUPREME COURT OF QUEENSLAND

CITATION: *R v Kennedy* [2026] QCA 183

PARTIES: **R**
v
KENNEDY, Danielle Elizabeth
(applicant)

FILE NO/S: CA No 91 of 2026
DC No 92 of 2025

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Southport – Date of Sentence: 13 March 2026 (Loury KC DCJ)

DELIVERED ON: 25 September 2026

DELIVERED AT: Brisbane

HEARING DATE: 15 September 2026

JUDGES: Bond JA, Doyle JA, Cooper J

ORDER: **Application for leave to appeal against sentence refused.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant pleaded guilty to two counts of common assault (counts 1 and 3), one count of assault occasioning bodily harm while armed (count 2) and one count of threatening violence at night (count 4) – where the applicant was sentenced to imprisonment for two years on count 2, and to concurrent sentences of imprisonment for six months on each of counts 1, 3 and 4 – where one day of pre-sentence custody was declared as time served under the sentence – where the parole release was fixed at 12 November 2026, after serving eight months in custody – where the applicant seeks leave to appeal against the sentence on the ground that it is manifestly excessive – whether the primary judge erroneously exercised their sentencing discretion – whether the sentence was manifestly excessive in the circumstances of the case

Penalties and Sentences Act 1992 (Qld), s 9(3)

Hili v The Queen (2010) 242 CLR 520; [2010] HCA 45, cited
R v MCT [\[2018\] QCA 189](#), cited
Wong v The Queen (2001) 207 CLR 584; [2001] HCA 64, cited

COUNSEL: The applicant appeared on her own behalf
M A Green for the respondent

SOLICITORS: The applicant appeared on her own behalf
Director of Public Prosecutions (Queensland) for the
respondent

- [1] **BOND JA:** I agree with the reasons for judgment of Cooper J and with the order proposed by his Honour.
- [2] **DOYLE JA:** I have read and agree with the reasons for judgment of Cooper J and with the order proposed by his Honour.
- [3] **COOPER J:** On 27 February 2025, the applicant pleaded guilty to two counts of common assault (counts 1 and 3), one count of assault occasioning bodily harm while armed (count 2) and one count of threatening violence at night (count 4).
- [4] On 13 March 2026, after numerous delays caused in part by the applicant twice changing legal representatives after she had pleaded guilty, the applicant was sentenced to imprisonment for two years on count 2, and to concurrent sentences of imprisonment for six months on each of counts 1, 3 and 4. One day of pre-sentence custody was declared as time served under the sentence. The applicant's parole release was fixed at 12 November 2026, after serving eight months in custody, that being one-third of the sentence imposed on count 2.
- [5] The applicant filed an application for leave to appeal against the sentence. The only ground specified in that application is that the sentence imposed was manifestly excessive. At the sentencing hearing, the applicant was represented by counsel. In this Court, the applicant was self-represented.
- [6] After filing the application, the applicant filed written submissions asserting that she was only partly guilty of the offences for which she was sentenced, and that the facts on which she was sentenced were exaggerated.
- [7] When the matter came on for hearing, the applicant was informed that her sentence application did not permit the Court to go behind her guilty pleas, or to decide the application other than on the facts on which she was sentenced. Having received that explanation, the applicant disavowed any desire to make any further application challenging her conviction or the facts on which she was sentenced. The applicant sought to have her sentence application determined on the basis which had been explained to her.
- [8] For the reasons which follow, that application should be dismissed.

The offending

- [9] The facts on which the applicant was sentenced were recorded in an agreed statement of facts. The offending occurred in the early hours of 14 November 2023. The applicant had not met the complainant until that morning. That meeting occurred in circumstances where, some hours earlier, the complainant had been in text communication with her ex-partner. The ex-partner told the complainant that he and the applicant would be going to a tree house in public bushland behind the ex-

partner's address. The ex-partner and the complainant had been building the treehouse and maintained a good relationship following their separation. In the text communications, the ex-partner suggested that he, the applicant, and the complainant could have some fun. The complainant took this to be a reference to group sex. The complainant said that she would attend the treehouse.

- [10] The treehouse comprised a platform suspended several metres off the ground with a single half wall running along one side and a rudimentary ladder for access.
- [11] When the complainant attended the treehouse, at around 1.30 am on the day of the offending, the ex-partner and the applicant had not arrived. While she waited, the complainant consumed some GHB. The ex-partner and the applicant arrived at the treehouse at approximately 2.30 am. By that time the effect of the drugs consumed by the complainant had worn off. The ex-partner introduced the applicant to the complainant. The applicant appeared intoxicated.
- [12] After a fire was lit on the ground below the treehouse, the ex-partner and the applicant went up the ladder to the treehouse. The complainant remained by the fire. Some time later, another woman arrived at the treehouse and asked for the ex-partner. The complainant climbed the ladder to the treehouse to tell the ex-partner. While she was on the platform, the complainant saw the ex-partner swaying and unsteady on his feet. The complainant grabbed one of the ex-partner's legs to stabilise him. In response, the ex-partner grabbed one of the complainant's breasts and the complainant jokingly poked him around his genitals.
- [13] The applicant took offence to this. She launched herself at the complainant and punched her in the head (count 1). The ex-partner separated the applicant from the complainant, and the applicant went down the ladder. The applicant screamed abuse at the complainant and then threw an unknown object which struck the complainant on the side of her head underneath her left eye (count 2). The complainant immediately felt pain and felt blood falling down her face into her mouth.
- [14] The applicant kicked property of the complainant into the fire before walking off. The ex-partner descended the ladder, followed by the complainant. The complainant told the ex-partner to leave and he left.
- [15] The complainant lost consciousness. She woke to find herself on the ground with objects hitting her. She saw the applicant pick up a rock and throw it at her, striking her in the face. The applicant also threw an object which hit the complainant's left foot (count 3). The applicant then picked up an axe and screamed at the complainant that she had three seconds to move before saying: "That's it. I'm going to kill you" (count 4).
- [16] The complainant ran towards a nearby street and met a friend who had come to assist her. The friend called an ambulance. Police attended and spoke to the complainant. The complainant told police she was assaulted by her ex-partner's current girlfriend who she knew as Danielle.
- [17] The complainant was transported by ambulance to the Gold Coast University Hospital. Her injuries comprised multiple fractures of her left cheek bone, sinus and eye socket area; a puncture wound under her left eye; swelling and bruising around her left eye, cheek and jaw. She received treatment in the emergency department where the puncture wound under her left eye was closed with three stitches. She was

discharged to allow the facial swelling to subside before her facial fractures could be further reviewed. Following that review, the complainant underwent open reduction and internal fixation surgery to address the facial fractures. The complainant subsequently provided a victim impact statement in which she described the effect which the offending had upon her.

- [18] The complainant provided a statement to police and identified the applicant from a photo-board. When police located the applicant, she voluntarily attended the police station and participated in an interview. The applicant admitted that she was present at the treehouse with the complainant and the ex-partner. She said that she and the complainant were yelling at each other as she was frustrated that the complainant was at the treehouse. The applicant denied assaulting the complainant but said she saw the complainant with a bloodied face. She said that when she saw the complainant with a bloodied face she ran from the location.

Applicant's antecedents

- [19] The applicant was 35 years old at the time of the offending, and 38 years old when she was sentenced. Her background was set out in a psychologist's report tendered by her counsel at the sentencing hearing. Her parents separated when she was an infant. She was raised by her mother during her primary school years, and then subsequently by her father for approximately three years until he re-partnered. By the time of the offending, she was estranged from her family and reported having very little support. She completed school until grade 10 and, later, completed most of grades 11 and 12 through TAFE. Although she had some work history – mustering cattle, working as a stable hand, cleaning and warehouse work – she had received government benefits for a significant period prior to the offending. At the time of the offending, she was using cannabis and GHB. She also reported prior use of methamphetamine and Subutex, as well as having previously undertaken the methadone program.
- [20] The applicant reported to the psychologist that her offending was caused by her becoming jealous when the complainant made overtures to the ex-partner. She reported that she was remorseful for the offending. The psychologist expressed the opinion that the applicant suffers from a major depressive disorder with some psychotic features, namely distrust of people. The psychologist stated that the applicant also has borderline traits in her personality, resulting in her having poor self-esteem, a fear of abandonment and a propensity for intense mood swings and impulsive behaviour.
- [21] The applicant had a criminal history at the time of the offending. Of most relevance, in 2017, she was sentenced to imprisonment for five years for arson, with parole eligibility after 18 months. She also received concurrent terms of three years imprisonment for enter dwelling with intent while armed, and two years imprisonment for assault occasioning bodily harm while armed and assault occasioning bodily harm. Those offences all arose from an incident where the applicant had become upset and confronted a man and his partner at a property in Southport. The applicant had been armed with a hurling stick which she used to strike the female complainant on the arm causing a severe bruise before leaving the property to purchase petrol. She then returned to ignite the petrol outside the door of the property causing significant damage. The male complainant suffered burns and injured his back as he fled the property.

Sentencing hearing

- [22] At the commencement of the hearing, the applicant's counsel requested an adjournment on the basis that he and the applicant's solicitor had not received the brief of evidence. The applicant's counsel had received the material which the Crown proposed to rely upon for the purpose of the sentence hearing (the statement of facts, the applicant's criminal history, two reports from Southport Community Corrections on the applicant's performance under an earlier probation order, and the complainant's victim impact statement). The sentencing judge stood the matter down to allow the applicant's counsel to take whatever instructions he required from the applicant. The hearing resumed after approximately 50 minutes.
- [23] The Crown submissions emphasised the protracted course of the applicant's offending and the seriousness of the injuries she inflicted on the complainant. Those submissions identified the applicant's prior convictions for violent offending and her conduct in continuing to assault the complainant after she had lost consciousness as aggravating features. The Crown submitted that if the offence charged in count 2 was dealt with alone, a term of imprisonment of between 18 months and two years would have been within range, relying on *R v McDonald* [2005] QCA 383, *R v Ball* [2012] QCA 51, and *R v Ewen* [2006] QCA 11. The Crown ultimately contended that, taking account of the applicant's overall criminality, a head sentence on count 2 of two to three years would be within range, with lesser concurrent terms for the other counts. The Crown submitted that the aggravating features of the offending meant that the applicant should be required to serve a period of actual imprisonment with parole release being set after she had served one third of the head sentence to reflect the guilty pleas.
- [24] In oral submissions, the applicant's counsel accepted that a head sentence of two years would be within range but submitted that the sentencing judge might contemplate parole release at the date of sentence, or alternatively earlier than at one third of the head sentence.

Sentencing remarks

- [25] In addition to summarising the circumstances of the offending and the description of the applicant's antecedents in the psychologist's report, the sentencing judge referred to relevant aspects of the applicant's criminal history and her prior performance on probation. The sentencing judge stated that she took the guilty pleas into account in the applicant's favour, particularly because it meant that the complainant did not have to give evidence at a trial. The sentencing judge noted that, in determining the appropriate sentence, she was required to give primacy to the impact of the offending on the complainant and the need to protect the community from the risk of the applicant reoffending: s 9(3) of the *Penalties and Sentences Act 1992* (Qld). The sentencing judge also referred to the requirements of deterrence (both general and personal), denunciation and the need to provide for the applicant's rehabilitation. The sentencing judge concluded by stating that, balancing the relevant considerations, she had determined that a global sentence of two years imprisonment with parole release after eight months to reflect the guilty pleas, was appropriate.

Manifest excess

- [26] In arguing manifest excess, it is not sufficient for the applicant to establish that the sentence imposed on her is different, or even markedly different, from other sentences

that have been imposed in other cases. Appellate intervention on the basis that the sentence is manifestly excessive would only be warranted if the applicant demonstrates that the difference is such that, in all the circumstances, this Court can be satisfied that there must have been some misapplication of principle, or that the sentence is unreasonable or plainly unjust.¹

- [27] That requirement is not satisfied in this case. The applicant's written submissions do not identify any relevant difference between her sentence and sentences imposed in other cases. I am satisfied that the sentence imposed on the applicant was consistent with those imposed in the comparable authorities to which the sentencing judge was referred. Having regard to the seriousness of the applicant's offending, its effect upon the complainant and the applicant's prior convictions for violent offending, the sentence cannot be characterised as unreasonable or plainly unjust. To the contrary, the sentence fell within the sound exercise of the sentencing discretion.

Order

- [28] The order which should be made is: Application for leave to appeal against sentence refused.

¹ *Wong v The Queen* (2001) 207 CLR 584, 605 [58]; *Hili v The Queen* (2010) 242 CLR 520, 538-539 [58]; *R v MCT* [2018] QCA 189, [240].