SUPREME COURT OF QUEENSLAND

CITATION:	*R v MKQ; Ex parte Attorney-General (Qld)* [2026] QCA 66
PARTIES:	**R** **v** **MKQ** (respondent) **EX PARTE ATTORNEY-GENERAL OF QUEENSLAND** (appellant)
FILE NO/S:	CA No 75 of 2025 DC No 169 of 2024
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Appeal by Attorney-General (Qld)
ORIGINATING COURT:	District Court at Maroochydore – Date of Sentence: 10 March 2025 (Gardiner DCJ)
DELIVERED ON:	17 April 2026
DELIVERED AT:	Brisbane
HEARING DATE:	18 August 2025
JUDGES:	Bond JA, Bradley JA, Cooper J
ORDER:	**Appeal dismissed.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEALS BY CROWN – PRINCIPLES APPLIED BY APPELLATE COURT TO CROWN APPEALS – where the respondent pleaded guilty to the offence of one count of grievous bodily harm – where the respondent was sentenced to two years' imprisonment with immediate parole release and no actual custody – where two compensation orders were made in favour of the complainant – where the Attorney-General appealed against the sentence on the grounds of manifest inadequacy – whether the offence was within a category of offending which required general deterrence and denunciation to always outweigh other relevant sentencing principles – where no actual custody was within the range of the proper exercise of the sentencing discretion – where manifest inadequacy was not demonstrated – where the Court of Appeal would not have exercised its residual discretion to intervene in any event *Penalties and Sentences Act 1992* (Qld), s 9, s 9(1), s 9(2A), s 9(3), s 9(10B) *R v Amituanai* (1995) 78 A Crim R 588; [1995] QCA 80, considered

R v Bryan; Ex parte Attorney-General (Qld) (2003) 137 A Crim R 489; [2003] QCA 18, considered
R v Chitty; Ex parte Attorney-General (Qld) [2021] QCA 2, considered
R v Cuff; Ex parte Attorney-General (Qld) [2001] QCA 351, considered
R v DCS; Ex parte Attorney-General (Qld) [2026] QCA 19, considered
R v Iese [2017] QCA 68, considered
R v Kelley [2018] QCA 18, considered
R v Leapai [2005] QCA 449, considered
R v Levy & Drobny; Ex parte Attorney-General (Qld) (2014) 244 A Crim R 296; [2014] QCA 205, considered
R v McDonald; Ex parte Attorney-General (Qld) [2025] QCA 85, considered
R v O'Grady; Ex parte A-G (Qld) (2003) 138 A Crim R 273; [2003] QCA 137, considered
R v Tapiolas [2008] QCA 118, considered
R v TBH; Ex parte Attorney-General (Qld) [2025] QCA 190, considered
R v Tupou; Ex parte Attorney-General (Qld) [2005] QCA 179, considered

COUNSEL: C W Wallis for the appellant
J Donnelly, with E Vuu, for the respondent

SOLICITORS: Director of Public Prosecutions (Queensland) for the appellant
Garrison Defence Lawyers for the respondent

[1] **BOND JA:** On 10 March 2025 the respondent was convicted on his own plea of guilty of one count of causing grievous bodily harm to the complainant. He was 18 at the time he committed the offence. His offending fit the all too familiar pattern of a drunk young man engaging in gratuitous public violence to another during a night out.

[2] The respondent was sentenced to a period of imprisonment of two years with an immediate parole release date. A conviction was recorded. Two compensation orders were made in favour of the complainant. The first order required the respondent to pay $8,000 within seven days, in default of which he would be required to show cause why a period of six months imprisonment should not be enforced. The second order required the payment of a further $7,000 within two years, with the same default requirement.

[3] The Attorney-General seeks to appeal the sentence on the grounds:

(a) The sentence imposed was manifestly inadequate; and

(b) The learned sentencing judge erred in his approach to the orders of compensation.

[4] In the event that this Court was persuaded that the sentencing discretion miscarried, counsel for the appellant submitted that this Court should exercise its discretion to

intervene[1] in order to confirm the principle which he contended was already established in the case law, namely that in cases which fit within this category of offending the considerations of general deterrence and denunciation will always outweigh the other relevant sentencing principles so as to require the offender to serve some actual period in custody.

[5] The appellant submitted that the respondent ought to be resentenced to serve five months' in actual custody with parole release thereafter, and otherwise the existing sentence should be confirmed.

[6] For reasons which follow the appeal should be dismissed.

The circumstances of the offending and its consequences

[7] Shortly after midnight on 9 July 2023, the complainant (then aged 21) and his friends entered a nightclub at Noosa Heads. The complainant and his friends had all been drinking. The complainant was very drunk.

[8] The respondent entered the nightclub at about 12.30 am. He too was with some friends. He too was intoxicated.

[9] At approximately 1.30 am, while in the vicinity of the dancefloor, the respondent bumped into one of the complainant's friends. The friend thought the bump was deliberate and a verbal altercation ensued between them. The complainant approached in an effort to calm the situation and asked the respondent a few times to walk away.

[10] The complainant's friend told the complainant, *"Don't you dare throw first mate"*. The respondent, while looking at the complainant, said, *"I'll fuck you up"*. The complainant's friend tried to encourage one of the respondent's friends to get the respondent to leave.

[11] The respondent ultimately pushed the complainant and the complainant's friend simultaneously, causing both to step back. The friend asked, *"What was that for?"* and the respondent punched the complainant's face with his right fist. Another one of the complainant's friends heard a cracking noise when the punch connected. The complainant's friend grabbed the respondent by the collar and said, *"Get the fuck off him"*. Other people got involved in trying to pull them apart.

[12] The complainant threw about two punches at the respondent's face, but it was not clear whether they connected. The respondent pushed the complainant away, causing him to stumble towards the floor, and continued punching his face. The respondent was ultimately restrained by bystanders and security intervened who directed both groups to leave.

[13] Following the offence, the complainant struggled to open his jaw and blood spilled from his mouth. He was in "intense pain". The complainant's friend called emergency services and a short time later police and paramedics arrived.

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[1] The approach to be taken in relation to the discretion which this Court must be persuaded to exercise on an Attorney-General's appeal against sentence is well-established. It has been recently considered in *R v DCS; Ex parte Attorney-General (Qld)* [2026] QCA 19 at [59] and [70] to [71]; *R v McDonald; Ex parte Attorney-General (Qld)* [2025] QCA 85 at [3] to [5]; *R v TBH; Ex parte Attorney-General (Qld)* [2025] QCA 190 at [5] and [42] to [43].

[14] The complainant was transported to hospital where significant dental injuries were documented:

(a) A missing front tooth and a fracture to the margin of its socket;

(b) A loosened tooth and a fracture to the margin of its socket;

(c) A partially missing tooth caused by a fracture to the crown of the tooth; and

(d) An oblique fracture to the left jaw involving the roots of four teeth, loosening the root of one of those teeth.

[15] The complainant was admitted to hospital and underwent surgery in respect of his fractured jaw, involving the insertion of two metal plates. He later received orthodontic treatment in respect of his teeth injuries. He had to take three to four weeks off his work as an apprentice carpenter. The dental and other medical treatment cost his family in the order of $25,000. After insurance, they were out of pocket to the extent of about $19,500.

[16] The complainant's victim impact statement recorded his injuries still caused him to struggle to eat and to suffer ongoing pain in his jaw and mouth causing him headaches. He stated that he had ongoing dental issues and would need to have further dental work done in the future. The unpaid leave that he had to take from the final year of his carpentry apprenticeship impacted him financially but also delayed the completion of his apprenticeship. The assault affected him emotionally. He has lost self-confidence and is embarrassed about his appearance. He currently has a retainer with a fake tooth which he has to take out to eat and this means that he does not eat in public.

[17] The complainant's parents also lodged a victim impact statement. They explained he continues to experience significant and ongoing effects, including the need for continued dental treatment, as well as persistent pain in his mouth and jaw, which contributes to frequent and debilitating headaches. They confirmed that they had observed their son struggled emotionally and was depressed, angry, embarrassed and not as carefree as he once was.

The Crown's submissions before the sentencing judge

[18] The Crown relied on written and oral submissions before the sentencing judge.

[19] The matters emphasised included:

(a) The maximum penalty for the offending was 14-years' imprisonment;

(b) Although the offender was a young man, with no previous convictions, who had facilitated the administration of justice through an early plea of guilty, the circumstances of the offending were serious and had caused significant harm to the complainant;

(c) Pursuant to s 9(2A) of the *Penalties and Sentences Act 1992* (Qld), imprisonment was no longer to be regarded as a last resort, and the principle that a sentence that allowed for the offender to stay in the community is preferable had been displaced; and

(d) The court must have primary regard to the principles identified in s 9(3) *Penalties and Sentences Act* when considering the appropriate sentence to impose.

[20] The Crown acknowledged the existence of the offer of compensation to which the respondent would refer and accepted that it would be a feature which the sentencing judge could take into account.

[21] The Crown drew the sentencing judge's attention to case law which emphasised the importance of general deterrence and denunciation, in support of the ultimate submission that there should be a sentence in the range of 18 months to three years imprisonment, suspended after a period of actual custody of less than one third of the head sentence to account for factors in mitigation.

The respondent's submissions before the sentencing judge

[22] The respondent's counsel submitted that the respondent should be sentenced to a period of imprisonment within the range of 18 months to 2 and a half years. He submitted the appropriate head sentence would be 2 years' imprisonment. However he submitted that, having regard to the respondent's antecedents, the sentencing judge should not impose actual custody.

[23] The respondent's counsel advanced submissions addressing the statements in the comparative cases concerning the desirability of the imposition of actual custody for gratuitous acts of violence in public, notwithstanding an offender's youth. He acknowledged the existence of those statements but drew to the sentencing judge's attention that they did not go so far as suggesting that actual custody was mandatory. He then drew the sentencing judge's attention to the considerations which he suggested warranted the sentencing judge concluding that he should not impose actual custody on the respondent.

[24] The respondent had no previous criminal history. The respondent placed before the sentencing judge a letter of remorse addressed to the complainant and his family which stated:

> "To [the complainant] and his family
>
> I am writing to tell you how sorry I am for the offence of grievous bodily harm, for which I am pleading guilty to.
>
> I have not stopped thinking about my behaviour since the night of the offence and I am deeply ashamed that I assaulted you while I was intoxicated. It was well below my standards as a person, and I am deeply disgusted with myself on how I have acted. I take full responsibility for my actions and can't imagine the pain and suffering I have caused you and your family.
>
> Since that night I have reflected about what I did and will never forgive myself for what I did. I am very committed to changing my ways and I have reached out and completed an anger management course, which has helped me greatly.
>
> I have saved 8 thousand dollars for you as compensation, but I know it won't take back the pain and suffering I caused you on that night and for the rest of your life."

[25] The respondent also tendered a report from an organisation which ran a 10-week anger management course which the respondent had attended. The report identified the subject matter addressed during the course and attested that "[t]hroughout the duration of the course, [the respondent] exhibited an exemplary dedication to

personal growth and a steadfast commitment to mastering the course's learning objectives." The report stated that he had achieved "significant strides" in his personal growth and self-awareness.

[26] The respondent was employed as a full-time trainee glass installer and labourer. His employer regarded him to be a reliable, trustworthy and conscientious worker, who was being considered for an apprenticeship. The respondent also placed references before the court from a family friend and also the Youth Support Co-ordinator from his former high school. The letters spoke positively about him and suggested that the violence was out of character.

[27] The respondent also placed a letter before the sentencing judge from the respondent's mother which stated:

> "I am [the respondent's] mother.
>
> I'm not condoning my sons actions. Its extremely out of character for him.
>
> [The respondent] has always been very supportive to me especially in relation to the difficulties I've had with his father which resulted in a Domestic violence order in February 2024, [the respondent] has previously witnessed his father being violent towards me. When [the respondent] was in year 12 age 17, he had to physically pull his father off me.
>
> [The respondent] has matured significantly since the offence against the complainant, he does not go out anymore and no longer enjoys alcohol.
>
> Instead, he stays home, he has been working hard and saving compensation for the complainant. He is so remorseful for his actions.
>
> [The respondent] has 4 siblings the youngest 2 are under the age of 10, [sibling's name] has very high needs, to the point where he will never be able to live alone.
>
> [The respondent] also provides me with so much support in relation to the children as I work full-time and his help and support is everything to me.
>
> He is a loving kind son that I am so grateful for. I don't know what I would do without him."

[28] Further to his mother's reference to the respondent providing her with support, Counsel drew the sentencing judge's attention to the fact that he assisted his mother with supervision and with meals for his siblings, especially his brother who had non-verbal autism and ADHD. Counsel submitted that the respondent was demonstrated to be a young man who did not shirk his responsibilities.

[29] Counsel for the respondent then referred to the offer of compensation. He told the sentencing judge that the sum of $8,000 was in trust and could be paid immediately. The respondent made about $950 per week and had managed to save that amount. Further, in the event that he remained in the community the respondent could comply with a higher compensation order to address more fully the expenses that

the complainant had suffered. He had the capacity of saving about $100 per week towards compensating the complainant.

The sentencing remarks

[30] In his Honour's sentencing remarks his Honour first noted that because the respondent had pleaded guilty to the charge, the penalty would be less than what he would otherwise impose in recognition of the co-operation in the administration of justice. The sentencing judge remarked that the circumstances were serious.

[31] He recorded the circumstances of the offending consistently with the agreed statement of facts. He recorded that he accepted the Crown prosecutor's submission that deterrence and community denunciation were very significant sentencing factors he had to take into account. He noted and took into account the circumstances of the victim impact statement. He noted further that he had received victim impact statements from the complainant's parents and he was prepared to give those statements weight.

[32] He noted that the respondent had pleaded guilty at an early time; that he came to the court as a young man with no criminal history. He had had regard to references placed before him on behalf of the respondent which demonstrated that his offending was out of character.

[33] He also had regard to the fact that the respondent had undertaken an anger management course and that the author of the report concerning his participation in that course had described his dedication to the course and his commitment to the mastering of the objectives of the course.

[34] The sentencing judge also took into account other references which described him as being trustworthy and reliable with aggression being out of his character. The sentencing judge had read and had regard to a letter from the respondent's mother.

[35] The sentencing judge noted the contents of the letter of apology and concluded that it demonstrated the respondent had very clear insight as to the effect his conduct had had on the complainant and his family. The judge noted the offer which had been made of compensation.

[36] The judge stated that he had noted that the respondent had been the victim of domestic violence at the hands of his father and that he had taken that into account as it was required to by s 9(10B) of the *Penalties and Sentences Act 1992* (Qld). The judge stated that he had had regard to ss 9(1), 9(2A) and 9(3) of the *Penalties and Sentences Act*.

[37] The sentencing judge acknowledged the various statements in the case law of the importance of general deterrence and denunciation. He acknowledged that the rehabilitation of a youthful offender is not the dominant consideration in the case before him, given s 9(3) of the *Penalties and Sentences Act* and the statements of principle in the cases in respect of denunciation of public violence. He concluded:

> "Bearing all of those matters in mind, particularly the consideration in your case, that you have offered compensation, which is not conventionally ordered if actual imprisonment is imposed, and the fact that if I were to order actual imprisonment, it would be a relatively short time, being a matter of months. I have concluded

> that an appropriate sentence for you is one of two years' imprisonment, and one that allows you to be on parole in the community.
>
> In my view, it is better for the complainant to receive the benefit of your compensation that you have offered, than have you in prison for what would be a period of months."

Consideration

[38] The material before the sentencing judge revealed that the respondent was a young man with no prior criminal history. His guilty plea was early. The violence was out of character. He was genuinely remorseful for his offending and had successfully undertaken steps to address anger management. He had good prospects of rehabilitation. He did not appear to pose any future risk to the community. All of these matters are matters which the sentencing judge was required to take into account and did take into account.

[39] The respondent was himself a victim of domestic violence, having witnessed his father's violence towards his mother and having had to intervene to protect his mother from his father. Parliament has recognised that being a victim of this sort of offending is relevant in the event that the victim himself offends. Indeed, that this factor might adversely influence a young man is obvious. Accordingly, this too was a matter which the sentencing judge was required to take into account and did take into account.

[40] The respondent's offer of compensation was of an amount which the respondent had saved out of his wages as a trainee glass installer and labourer. He had the capacity to save a little more than 10 per cent of his pay. The fact of him having saved monies out of his wages (or, as his mother suggested, that he has been staying home, working hard and saving compensation) both demonstrated his remorse and his commitment to his rehabilitation. His offer to continue to save towards a further payment emphasised that commitment.

[41] If the sentencing principle for which the appellant's counsel contends truly did exist, then failure to apply that principle should have been raised by an appeal ground asserting specific error. But that failure does not matter because there is no such sentencing principle. While it has often been accepted that offending in the present category will ordinarily attract the imposition of some actual period in custody, the instinctive synthesis of the various considerations to which s 9 of the *Penalties and Sentences Act* refers so as to reach the appropriate sentence has not been regarded as fettered in the way for which the appellant's counsel contends.[2] Indeed the section does not admit of that construction.

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[2] *R v Amituanai* (1995) 78 A Crim R 588 at 589 per Pincus JA with whom White and Thomas JJ agreed and at 596-7 per White and Thomas JJ with whom Pincus JA agreed*; R v Cuff; Ex parte Attorney-General (Qld)* [2001] QCA 351 at page 4 and page 6 per Williams JA with whom Thomas JA and Holmes J agreed; *R v Bryan; Ex parte Attorney-General (Qld)* [2003] QCA 18 at [26] and [30] per Williams JA with whom de Jersey CJ and Cullinane J agreed*; R v O'Grady; Ex parte Attorney-General (Qld)* [2003] QCA 137 at [30] per Williams JA with whom Atkinson J agreed; *R v Tupou; Ex parte Attorney-General (Qld)* [2005] QCA 179 at page 13 per de Jersey CJ with whom Atkinson and Mullins JJ (as her Honour then was) agreed; *R v Leapai* [2005] QCA 449 at page 7 per White J with whom McMurdo P and Chesterman J agreed and at page 7 and page 8 per Chesterman J; *R v Tapiolas* [2008] QCA 118 at [14] per Holmes and Muir JJA; *R v Levy & Drobny; Ex parte*

[42] The sentencing judge was cognizant of the features which required the respondent to be sentenced to a period of imprisonment. He was also cognizant of the case law which suggested that ordinarily such a sentence would require that the respondent serve a period in actual custody. But it is evident that the sentencing judge was sufficiently persuaded of the weight of the mitigating features to determine to afford this particular respondent the leniency of not imposing actual custody.

[43] The weight which the sentencing judge gave to the various considerations which the sentencing judge must consider was a matter for the sentencing judge. For the appeal ground of manifest inadequacy to succeed, the appellant must persuade this Court that the outcome in this case is so unreasonable or plainly unjust that error may be inferred even though it cannot be identified. I am unable to reach that conclusion. In my view, while other sentencing judges might well have imposed a period of actual custody, a decision not to do so was within the range of the proper exercise of the sentencing discretion in the particular circumstances of this case.

[44] As for the second ground of appeal:

(a) The appellant argued, first, the sentencing judge had improperly fettered his sentencing discretion by engaging in a binary approach and, second, that the sentencing judge had improperly assumed that a custodial sentence would preclude, or limit, the respondent's capacity to pay compensation.

(b) As to the first point, the sentencing judge did not engage in a binary approach. It is plain from his Honour's sentencing remarks that he engaged in a careful consideration and balancing of the relevant considerations to reach the outcome which he did.

(c) As to the second point, the sentencing judge did no more than acknowledge that if the respondent was in custody he would not be earning a living and would not be in a position to save money towards compensation whilst he was in custody.

(d) This ground has no merit.

[45] I should remark though that even if I had formed a different view as to the merits of the appeal grounds, this was not a case in which I would have concluded that this Court would exercise its discretion to intervene. First, the principle which counsel for the appellant suggested should be confirmed does not exist. Second, and in any event, it would be inappropriate in all the circumstances to require the young respondent to be returned to custody more than a year after his sentence was imposed, especially for the relatively short term proposed by the appellant.

[46] That exercise of discretion would also be supported by the affidavit evidence before this Court which demonstrates the respondent has complied with his parole conditions, continued to save towards the compensation and has made excellent progress in his rehabilitation. The affidavit evidence provides further support for

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Attorney-General (Qld) [2014] QCA 205 at [71], [84] and [88] per Morrison JA with whom Philip McMurdo J and Holmes JA agreed; *R v Iese* [2017] QCA 68 at [34] to [35] per Gotterson JA with whom McMurdo JA and Flanagan J agreed; *R v Kelley* [2018] QCA 18 at [40] – [43] and [51] per Morrison JA with whom Sofronoff P and Philippides JA agreed; *R v Chitty; Ex parte Attorney-General (Qld)* [2021] QCA 2 at [46] to [52].

the conclusion that the respondent's exposure to domestic violence is a significant mitigating factor in his case.

[47] I would order that the appeal be dismissed.

[48] **BRADLEY JA:** I agree with Bond JA.

[49] **COOPER J:** I agree with Bond JA.