



Activity: You be the Judge

Part 1

Consider the following fact situation and determine the penalty you think is appropriate, taking into account any **aggravating** or **mitigating** factors:

- The appellant arrived in Perth from Victoria on 29 December 2020.
- On 31 December 2020 the State Emergency Co-Ordinator signed the Victorian Outbreak Recently Arrived Travellers Self-Quarantine Directions 2020. This required any person travelling from or having been in Victoria between 21 December and 31 December to quarantine immediately.
- This quarantine directive applied to the appellant. He received a text message from WA police advising him he had to self-quarantine at his property for 14 days from 29 December 2020.
- On 10 January 2021, 13 days into his quarantine, police attended his property, and he was not there.
- He was interviewed by police when he returned to the property. He admitted he had breached a self-quarantine direction by attending a friend's house earlier in the morning. He used a rideshare service to go to and from his friend's house. He did not wear a face mask.
- He had been tested for Covid-19 on 9 January. When he left his home, he did not know the result of that test.
- The appellant tried to plead guilty by post but was summoned for sentencing. The Magistrate asked if he would like legal advice prior to reading out the material facts of the case. The appellant declined. He was remorseful and showed good character in court.

Your Judgment

Remember that the **maximum penalty** for breaking this restriction is imprisonment for 12 months or a fine of \$50 000.

Based on these facts, what penalty would you impose and why?

Part 2

The case you have just assessed was **non-fictional**, and the facts are true to life. The official transcript of the case can be found here:

AAN v BUTTERFIELD [2021] WASC 228 (13 July 2021)

 <https://bit.ly/3yeLQiA>

Now consider the decision of the Magistrate:

The Magistrate determined that 'notwithstanding your lack of record and your early plea, in my view, a term of imprisonment is required, but that term can be partially suspended. I am going to sentence you to 7 months imprisonment, but I will suspend 5 months of that, so after serving 2 months of imprisonment you will be released and serve the remainder in the community.' [See 19].

Do you think the Magistrate's sentence is proportionate for the crime committed?

Judgement of the Supreme Court of Western Australia

The appellant appealed this sentence to the Supreme Court of Western Australia.

Ground 1: Was the sentence manifestly excessive?

His Honour did not comment on this as Ground 3 of the appeal was successfully made out, therefore it was not necessary to prove Ground 1.

Ground 2: Did the Magistrate consider the plea of guilty?

The Magistrate did not identify the fact of the discount for a plea of guilty and did not specify the amount discounted for the plea of guilty. His Honour concluded 'the magistrate did not comply with s9AA of the Sentencing Act because he failed to identify the reduction in sentence afforded to the appellant but reason of his guilty plea and thus the magistrate made an error of law.' [See 23].

Ground 3: Did the Magistrate make it clear to the appellant that he was considering imposing a period of imprisonment and that he should seek legal advice?

His Honour said 'the magistrate erred in failing to inform the appellant of the seriousness of the charge and the penalties which may be imposed including the risk of being sentenced to a term of imprisonment.....Unfortunately the magistrate did not inform the appellant of the seriousness of the offence with which he had been charged and the possibility that term of imprisonment might be imposed. Nor was the appellant informed of his right to put matters before the court in mitigation.' [See 24].

'It is relevant that the appellant was 20 years old at the time of sentencing and had no prior criminal convictions. It may be inferred from the appellant's attempt to plead guilty by post and his attendance at court without representation, that he had no appreciation that he was likely to be sentenced to a term of imprisonment.' [See 29].

'Ground 3 has been made out.... The error was capable of affecting the sentence imposed and it is not for this court to assess whether and to what degree the error influenced the outcome.' [See 30]. 'The magistrate made an express error of law, and the error was material.' [See 31] ... 'on this basis I grant the appellant leave to appeal and proceeded to resentence the appellant.' [See 32].

The appellant's **aggravating and mitigating factors** can be summarised as [See 34-35]:

Aggravating Factors	Mitigating Factors
<ul style="list-style-type: none"> ● The offence occurred in the context of a global pandemic. ● The selfish nature of the appellant's behaviour and the risk that he created for the community. 	<ul style="list-style-type: none"> ● He was young, 20 years old at the time of the offending; ● He was remorseful; ● He has no prior convictions ● He was of prior good character, as evidence by the character reference provided to the court; and ● He entered a plea of guilty at the first opportunity

Deterrence

'This was a situation where the requirement for general deterrence was a very significant factor. That being so, it will seldom be the case that imprisonment will not be considered as a potential sentencing disposition.' [See 37].

'The requirement for personal deterrence was less significant.....it appeared unlikely that the appellant would commit an offence again.' [See 38].

'Having regard to all of the relevant circumstances, including that the appellant had spent two days in custody I determined that the appropriate disposition was that the appellant be sentenced to a 6 month Community Based Order with a community service requirement of 60 hours.' [See 39]. 'I concluded that I should make a spent conviction order.' [See 40].

Review Questions

1. Think back to the initial sentence you imposed, have you changed your mind? If yes, why and if no, why not?

2. What were some of the mitigating and aggravating factors that His Honour considered?

3. It is a common law principle that imprisonment should be used as a sanction of last resort. Do you think breaching quarantine orders should lead to a prison sentence? What are some alternatives to imposing a prison sentence?
