

***R v Loulanting* [2015] ACTSC 172 (23 June 2015) – Australian Capital Territory Supreme Court**

‘Breach of a protection order’ – ‘Drug and alcohol programs’ – ‘Following harassing, monitoring’ – ‘People affected by substance misuse’ – ‘Sentencing’ – ‘Threat to kill’

Charge/s: Threat to kill, breach of a protection order x 2.

Hearing: Sentencing hearing.

Facts: The offender was charged with and pleaded guilty to 2 counts of breaching a protection order (where the protected person was his former female partner) and making threats to kill. On 18 January 2015, the offender contacted the protected person, asking to see his son. She refused because he had been using ice and was acting aggressive and demanding. The offender then sent her a number of text messages that were indecent, offensive and aggressive. The protected person ignored these messages as he had sent similar messages in the past. However, the next day, the offender called again and left a voice mail and text messages threatening to kill her.

Decision and Reasoning: The offender was sentenced to a total sentence of 4 years imprisonment, including 12 months imprisonment for the breaches of the protection order and 2 years and 6 months imprisonment for the threat to kill. This sentence was appropriate in light of a number of factors. The offences required punishment and denunciation, and considerations of general and specific deterrence were also significant. Refshauge J accepted that the offender genuinely sought rehabilitation but noted that agencies the offender had been referred to in the past had had no significant impact on his behaviour. His Honour took into account the plea of guilty, the offender’s mental health and accepted that the offender felt remorseful (See [44]-[48]).

His Honour further took into account the seriousness of the offences, which were particularly concerning as they were committed in the context of family violence. First, the threat to kill was serious. The use of ice, earlier harassment and changed tone from the earlier conversation all showed the serious intent of the offender and the fear that this threat was likely to have had engendered in the victim. The fact that this offence was brought on by the use of ice was not a mitigating factor but Refshauge J took into the offender's desire for rehabilitation and the, so far unsuccessful, attempts he had made at rehabilitation. The denial of access to his son also provided explanation for the offence but was not a mitigating factor in any way (See [37]-[40]). Second, the breaches of the protection order were also serious, albeit less serious than the threat to kill. The breaches were deliberate and intentional. While they were not the most serious versions of the offence, they were not made by personal approach, they were still serious as the contact was made over two days and was abusive and indecent (See [41]-[42]).

Refshauge J stated:

There is no doubt that the addiction to drugs creates significant problems for the community, as well as for the user and his or her family. When the drug is methylamphetamine, or ice, the violence that it also generates can create further problems, particularly if there are stressed family situations leading to family violence. When mental health issues are added to the situation, it creates great complexity in trying to deal with the multiple issues that arise (See [1]).