

***Khan v Evans* [2013] ACTSC 211 (4 October 2013) – Australian Capital Territory Supreme Court**

‘Aboriginal and Torres Strait Islander people’ – ‘Breach of domestic violence order’ – ‘People affected by substance misuse’ – ‘Temporary protection order’

Charge/s: Breaches of an interim protection order x 4, breach of a personal protection order, failure to comply with a bail undertaking to appear in court, common assault x 2.

Appeal type: Appeal against sentence.

Facts: The appellant, an Aboriginal man, had been in a relationship with the female complainant and they had 3 children together. The complainant was granted a personal protection order against the appellant. The appellant breached these orders on 5 occasions by being at the premises of the complainant. The common assault offences occurred when the appellant assaulted his father. The appellant pleaded guilty to 4 breaches of an interim protection order made on 23 July 2012 and breach then of the personal protection order subsequently made on 23 August 2012, a failure to comply with a bail undertaking to appear in court, and 2 offences of common assault. In the Magistrates Court, a total period of imprisonment of 16 months was imposed from 21 March 2013, with a non-parole period of 12 months.

Issue/s: The grounds of appeal were –

- > The sentence was manifestly excessive.
- > The magistrate erred in failing to take into account a period of pre-sentence custody.
- > The good behaviour order for which the appellant was sentenced had been cancelled and could not have been breached by the offences.

Decision and Reasoning: The appeal was upheld on grounds 2 and 3 but not ground 1. The magistrate failed to take into account a period by pre-sentence custody by starting the sentences on 21 March 2013 rather than 23 February 2013. Further, the good behaviour order for which the appellant had been sentenced had previously been cancelled (See [42]-[49]). However, the sentence could not be said to be manifestly excessive. Refshauge J stated,

'While the offence against Mr Khan's father could also be described as domestic violence, the fact is that the interim personal protection order and the personal protection orders are there to protect the complainant from what might be described as domestic violence in its widest sense. Therefore, such orders are an important component of the criminal justice system's response to domestic violence. Breaches of personal protection orders are serious matters which the courts must treat seriously to ensure the integrity of the system which the protection orders are intended to put in to effect' (See [52]).