Reid v Smith **[2014] ACTSC 349 (21 October 2014) – Australian Capital Territory Supreme Court**

'Assault' – 'Breach of domestic violence order' – 'Damaging property' – 'Aboriginal and Torres Strait Islander peoples' – 'People affected by substance misuse' – 'Rehabilitation' – 'Sentencing'

Charges: Damaging property, breach of domestic violence order, assault

Appeal type: Appeal against sentence

Facts: The appellant, an Aboriginal man, and the victim were in a relationship and had a son together. The appellant and victim also both had a daughter each from previous relationships. He was charged and convicted of damaging property, assault and breaching a domestic violence order made to protect the victim. No further information about the offending or factual matrix was provided. Since his arrest and while on bail, the appellant attended Oolong House several times where he received rehabilitative treatment. The magistrate sentenced the appellant to 12 months' imprisonment each for the assault and damaging property offences, to be served concurrently, and two years' imprisonment for the breach of the domestic violence order. In sentencing, the magistrate stated 'The current offences continue a pattern of behaviour that appears entrenched in the context of the relationship with the victim. Despite legal sanctions and protection orders, [the appellant] has yet to demonstrate the responsibility to abide by conditions to uphold the safety of vulnerable people in his life. Under the influence of substances his behaviour poses unacceptable risks for such people' ([5]).

The appellant had a somewhat difficult childhood with his parents divorcing after his father suffered a stroke and his mother abusing alcohol. He finished school at year 10 and had very limited and sporadic employment since then. He had a long history of alcohol and drug abuse and engaged in residential rehabilitation several times. The appellant also suffered depression, stress and anxiety and was housed in the AMC Crisis Support Unit since his remand due to his risk of suicide and/or self-harm. He had an extensive history of criminal offending, including convictions for common assault, assault occasioning actual bodily harm and contravening protection orders against the victim.

Issues: Some grounds of appeal were:

1. Whether the magistrate failed to take into account the time spent at a rehabilitation centre.
2. Whether the magistrate failed to give adequate weight to the decision in *Bugmy v The Queen* [2013] HCA 37 ('*Bugmy*').

Decision and reasoning: The appeal was dismissed.

1. There is no requirement in sentencing to give credit and discount the sentence for time spent in residential rehabilitation between the commission of an offence and the sentencing for that offence. The magistrate therefore did not err in failing to explicitly take into account the appellant's successful completion of the Oolong House rehabilitation program.

2. In *Bugmy*, the High Court of Australia considered, '*An Aboriginal offender's deprived background may mitigate the sentence that would otherwise be appropriate for the offence in the same way that the deprived background of a non-Aboriginal offence may mitigate that offender's sentence… Aboriginal Australians as a group are subject to social and economic disadvantage measured across a range of indices but to recognise this is to say nothing about a particular Aboriginal offender … An offender's childhood exposure to extreme violence and alcohol abuse may explain the offender's recourse to violence when frustrated such that the offender's moral culpability for the inability to control that impulse may be substantially reduced. However, the inability to control the violent response to frustration may increase the importance of protecting the community from the offender* '. While Penfold ACJ acknowledged that the appellant had a 'somewhat troubled background', she did not consider that a failure to give adequate weight to a particular consideration was a sufficient ground to evoke the court's appellant jurisdiction, relying on *R v Ang* [2014] ACTCA 17, [22]-[24].