

***Redden v Slavin-Molloy* [2008] ACTSC 37 (29 April 2008) – Australian Capital Territory Supreme Court**

‘Breach of a protection order’ – ‘Damaging property’ – ‘Following, harassing, monitoring’ – ‘Protection orders’ – ‘Repeated breaches’ – ‘Specific deterrence’

Charge/s: Contravention of a protection order x 2.

Appeal type: Appeal against sentence.

Facts: The female complainant obtained a protection order against the male appellant, her former partner. In breach of this order, the appellant attended her home. When she refused to let him inside, he began yelling and attempted to break down the door. She called for help and the appellant fled. The next day, the appellant again tried to obtain entry to the complainant’s home. He struck and damaged the front door when he was refused entry and again ran off when he was told the police had been called. In December 2007, the offender was sentenced to 10 and 15 months imprisonment respectively for these breaches. Earlier, in May 2007, the offender had been sentenced for a number of other offences, including four charges of contravening a protection order. For the most serious of these breaches, he was sentenced to six months imprisonment to be served as periodic detention.

Issue/s: One of the grounds of appeal was that the sentence of 10 months imprisonment and 15 months imprisonment was manifestly excessive.

Decision and reasoning: The appeal was allowed. Penfold J noted that:

‘To the extent that punishing an offender ever more severely because of repeat offending, rather than because the individual offences have become more serious, is justifiable, such an approach must relate to the need for specific deterrence of an offender who appears unwilling to learn from previous penalties. Even in that case, the penalty must still remain referable in some way to the actual offence committed’ at [38].

Here, the sentence was manifestly excessive (See [42]). In particular, the two sentences imposed were at least twice as severe as the most severe penalty previously imposed for breach of a protection order in May 2007. However, if the May 2007 breaches were so much less severe than the conduct here, it was hard to see how they would have justified imprisonment at all (See [37]). Further, at the time of the August breaches, the offender had not served any full-time custody or even any periodic detention. It could not be assumed that his actions in August were informed by any understanding of the reality of a custodial sentence (See [39]). Other relevant mitigating factors were taken into account (See [30]).

The appellant was re-sentenced to 6 months imprisonment for each breach.