

## ***Kirkwood v Thomas* [2017] TASSC 56 (15 September 2017) – Supreme Court of Tasmania**

‘Breach of domestic violence order’ – ‘Not manifestly excessive’ – ‘Text messages’ – ‘Threats’ – ‘Totality’ – ‘Verbal abuse’

Charges: Breach of family violence order x 2.

Appeal type: Appeal against sentence.

Facts: The defendant and the complainant were separated. The order prohibited him from threatening, abusing or assaulting the complainant, but not from going to her house. The first charge related to the defendant attending her house, ringing and knocking on the doors, and calling the complainant. The second charge related to the defendant sending the complainant 8 text messages also insulting the complainant and demanding money ([2]). The magistrate sentenced the appellant to two months’ imprisonment, cumulatively with a 5½ year sentence he was currently serving ([5]). That sentence related to a subsequent attack on the complainant, where the defendant broke into the complainant’s house and beat her with a baseball bat, leaving her with permanent disfiguring injuries and pain ([6]-[9]).

Issues: Whether the magistrate gave insufficient weight to the principle of totality, and whether the sentence was manifestly excessive ([11]).

Decision and Reasoning: The judge had to decide first if the sentence of two months was manifestly excessive in order to conclude whether the principle of totality had been breached ([12]). It was relevant that the defendant could have been sentenced for longer than 5½ years for the attack with the baseball bat ([12]). There is usually a discount for subsequent sentences, especially because denunciation and personal deterrence may have been achieved by the first sentence ([13]). There was evidence that the appellant had undertaken some family violence and anger management programs in custody ([19]). However, in this case, a heavy sentence was warranted because there had been repeated breaches of the family violence order in the past, and family violence cases warrant tough sentences ([18]). Therefore, it was open to the magistrate to impose the cumulative sentence of two months ([22]).