

## ***Kibblewhite v Buik* [2020] ACTSC 132 (11 June 2020) – Australian Capital Territory Supreme Court**

‘Autism spectrum disorder’ – ‘Breach of protection order’ – ‘People with disability and impairment’ – ‘People with mental illness’ – ‘Self-represented litigants’ – ‘Specific error’ – ‘Step-children’

Charges: Contravening a family violence order x 1

Case type: Appeal against conviction and sentence

Facts: The appellant man was convicted of contravening a family violence order protecting his female former partner (the victim) and her two children. A conviction was recorded and he was ordered to enter into a good behaviour bond for 12 months.

The family violence order prevented the appellant from being at the premises where the protected persons lived, being within 100 metres of them or engaging in behaviour that constituted family violence. He had attended her home at her invitation after mediation, they had rekindled the relationship and the police were called when the victim sent a text message to a friend asking her to call police. The victim said she sent the text message because the appellant "had begun playing psychological mind games on her and abusing her in relation to a number of morning after pills he had located" ([12]). The appellant claimed that because the victim initiated the contact, he thought that he did not breach the family violence order. The appellant was self-represented at the sentencing hearing. Further evidence of a forensic psychiatrist's report was also admitted on appeal.

Grounds:

1. The (self-represented) appellant was denied procedural fairness in being denied an adjournment by the learned Magistrate;
2. Her Honour failed to consider whether a non-conviction order was appropriate;
3. Her Honour placed undue weight on the need for general and specific deterrence and denunciation; and
4. the sentence was manifestly excessive ([2]).

Held: The appeal was allowed, the Magistrate's orders set aside and the appellant was ordered to enter into a good behaviour order for 9 months without conviction ([75]).

The appellant had faced prior charges of assaulting and resisting an officer and contravening a domestic violence order which were dismissed under the "Mental Health Act" ([18]). He suffered from autistic spectrum disorder which affected his thinking, increased his anxiety and interfered with his ability to maintain relationships. The offending was at the low end of the spectrum for this kind of offence. Extenuating circumstances included (1) the victim's invitation to recommence contact; (2) the re-establishment of a physical relationship between the parties over a period of weeks before the conduct in question; (3) the victim's consent to the appellant being at her home; and (4) the absence of any request for him to leave the house or cease contact prior to the police being called ([68]). Mossop J noted that the power in s17 Crimes (Sentencing) Act to not record a conviction will not often be deployed in family violence cases due to the need for general and specific deterrence, but the extenuating circumstances of the present case and the appellant's personal matters meant a conviction should not have been recorded ([70]). The Magistrate made a specific error in failing to give consideration to the application of s 17 ([51]).