***KIC v Tennant* [2019] ACTSC 145 (23 January 2019) – Australian Capital Territory Supreme Court**

'Breach of protection order' – 'Child contact' – 'Physical violence and harm' – 'Women'

Appeal type: Appeal against conviction and sentence.

Facts: The appellant had previously been served with an Interim Family Violence Order (the Order). Among other things, the Order prohibited the appellant from being within 100 metres of the protected person, his wife, except when handing over their child. The wife alleged that shortly after being served, the appellant breached the Order by walking in front of her house at a time she was home. She claimed that when the appellant was walking past her property, he stopped and looked into the residence. She also claimed that the appellant returned twice after leaving and began to follow her when he saw her outside.

The appellant pleaded guilty to the breach in the Magistrate Court. This plea was later withdrawn, but then reinstated during these proceedings.

Issue: Whether the sentence imposed by the magistrate was manifestly excessive.

Decision and reasoning: During the proceedings in the Magistrate Court, the appellant attempted to tender a document detailing the events of the day the offence allegedly occurred. The magistrate rejected this document on the grounds that it sought to 'traverse' the plea of guilty [9]. While Burns J disagrees with the grounds on which the magistrate refused the document, His Honour believed it should have been rejected because it was self-serving. The contents and rejection of the appellant's document formed the main focus of Burns J's judgment.

Burns J had great difficulty accepting most of the appellant's evidence both in the document and that which the appellant gave before Burns J. The appellant claimed that he visited the area near to his wife's residence to find a spot for his daughter to wait for him to pick her up the next day. The appellant also claimed that he had recently undergone a procedure to his eyes which resulted in him being unable to see more than one metre in front of him. Burns J provided that given the condition of the appellant's eyes and the fact that he visited the residence at 10 pm, 'it does not make any sense whatsoever that in his circumstances' he visited the residence for the reason he claimed [13].

Burns J also found it difficult to accept the appellant's submissions as he had made no challenge to the Statement of Facts that were read before the magistrate. The Statement of Facts did not include any of the above claims and instead provided that the appellant walked passed the protected person's house while he was out walking to take care of his health (as the appellant claimed to be diabetic). His Honour concluded that he was "not now prepared to find that the events occurred in the way in which the appellant now suggests that they did. On that basis, [Burns J] propose[d] to proceed on the basis that the circumstances of the offence went as put before the magistrate' [17].

Burns J dismissed the appeal, commenting 'it has not been demonstrated that the sentence [was] manifestly excessive, nor [was Burns J] satisfied that there was any relevant error which would have affected the outcome of the proceedings before the magistrate' [21].