

***R v Elphick (No 2)* [2015] ACTSC 23 (1 April 2015) – Australian Capital Territory Supreme Court**

‘Breach of personal protection orders’ – ‘Children’ – ‘Damaging property’ – ‘Following, harassing, monitoring’ – ‘People affected by substance misuse’ – ‘Protection order’ – ‘Stalking’ – ‘Threatening to commit arson’ – ‘Victim impact statements’

Charge/s: Threatening to commit arson, stalking, breach of a personal protection order x 2.

Hearing: Sentencing hearing.

Facts: The offences arose out of the breakdown of a relationship between the offender and his former female partner. The relationship ended acrimoniously, particularly in relation to the care and access arrangements relating to the care of the couple’s child. The offender’s former partner obtained Domestic Violence Order against the offender and her parents obtained Personal Violence Protection Orders. Subsequently, the offender and his former partner had an argument over the telephone over the care and access arrangements for their daughter. The offender went over to the house of his former partner’s parents and began shouting and swearing at his former partner. He produced a cigarette lighter and threatened to burn her parent’s car. Further, the offender pleaded guilty to a count of stalking on the basis of 25 phone calls made to his former partner. Most were for relatively short periods and were made at varying hours of the day. Finally, the offender breached the Personal Protection Orders by calling his former partner’s parents on multiple occasions.

Decision and Reasoning: Refshauge J imposed a total sentence of 2 years and 4 months imprisonment, suspended for a period of two years. In imposing this sentence, Refshauge J took into account the purposes of sentencing and in particular, specific deterrence and vindication of the victims (in light of the Victim Impact Statements delivered in court — See [67]-[70]). He also took into account the offender’s plea of guilty and his subjective circumstances (including the offender’s drug problem).

These offences were serious and warranted a term of imprisonment. The offence of arson was serious because the offender produced a cigarette lighter, there was a threat with intent to achieve an objective to which he may otherwise not have been entitled, and it was committed at the home of the victim. The stalking offence was also a serious offence particularly because it was committed with a circumstance of aggravation, namely in the presence of a Domestic Violence Order. Finally, the breaches of Personal Protection Orders were serious because they involved a disregard of a court order designed to protect the subjects of the orders.