

***Alchin v McInerney* [2015] ACTSC 300 (25 September 2015) – Australian Capital Territory Supreme Court**

*Note: this case referenced now superseded legislation, however the statements of principle are unaffected by the legislation change.

‘Breach of domestic violence order’ – ‘Deterrence’ – ‘Following harassing, monitoring’ – ‘Protection order’ – ‘Sentencing’

Charge/s: Breach of a domestic violence order.

Appeal type: Appeal against sentence.

Facts: The appellant had been in an ‘off and on relationship’ with the female victim for 10 years. A Domestic Violence Order was made in favour of the victim against the appellant. Subsequently, one evening between 9.13pm and 10.04pm, the appellant made 10 telephone calls to the victim. He left one message saying: ‘*You wait cunt. Your house is smashed and that fucking cunt you’re rooting. I am going to kill that cunt*’. The appellant pleaded guilty at the first reasonable opportunity to the breach and was sentenced to a period of imprisonment of 22 months with a non-parole period of 15 months.

Issue/s: One of the grounds of appeal was that the sentence was manifestly excessive.

Decision and Reasoning: The appeal was upheld. The offence was very serious but the objective circumstances did not warrant a term of imprisonment of 22 months. As per Robinson AJ: ‘*Significantly, there was no face to face confrontation, no infringement of the prohibition to be on the property of or within 100 metres of Ms BC and no weapon was involved. Ms BC did not answer the telephone calls*’. His Honour referred to *R v Loulanting* [2015] ACTSC 172 as being a factually similar case. His Honour acknowledged that compliance with any type of protection order is essential to protect members of the community from violence and anti-social behaviour. It is therefore open to the Court to impose a stern penalty to achieve this end. However, the punishment must still be proportionate to the offending and here this could not be said to be the case (See [25]-[26], [32]-[35]).

The appellant was re-sentenced to 14 months imprisonment. Robinson AJ stated: ‘*In my view substantial weight should be accorded, in the circumstances of this case, to deterring the offender and others from committing the same offence. His conduct was a defiance of the orders of the Court. This was by no means the first such defiance. There is value in our society upholding all orders of Courts. There could be said to be even more value in upholding protection orders in the context of the role that protection orders now play in our society in all jurisdictions*’ at [54].