

***Purcell v O'Reilly* [2018] ACTSC 60 (9 March 2018) – Australian Capital Territory Supreme Court**

‘Children’ – ‘Coercive control’ – ‘Damaging property’ – ‘Separation’

Proceeding: Appeal from Magistrate’s sentence order following conviction for damage property causing damage of no more than \$5000.

Grounds:

1. The sentence was manifestly excessive;
2. The Magistrate misapplied [s 17 of the Crimes \(Sentencing\) Act \(2005\)](#) (ACT) in failing to make a non-conviction order.
3. The Magistrate erred in refusing to consider a non-conviction order on the basis that as a family violence offence the matter was too serious a matter to be dealt with by a non-conviction order. He also submitted the sentence was manifestly excessive as the appellant was entitled to a sentencing discount as without the appellant’s confessions the offence would have been difficult to prove.

Facts: The offence occurred when the appellant man was a guest in his former wife’s home so that he could take his son to football training in the morning. The appellant demanded to see his former wife’s phone and refusing, she retreated to her bedroom and locked the door. The appellant threatened to break the door down if she did not unlock it. The appellant’s daughter blocked his access to her mother’s bedroom door. The appellant went to the lounge room, picked up a flat screen TV and threw it to the ground, picked up the glass table it had been sitting on then threw the table onto the TV screen, causing it to shatter. His former wife declined to make a statement to police and police proceeded with the matter based upon the appellant’s admissions at the scene.

Decision and Reasoning: The appeal was dismissed. The Magistrate was simply identifying this particular offence as involving family violence, and taking place in the complainant’s home where a child was present. On that basis, she concluded that the particular offence is too serious to be dealt with under [s 17](#). This is not a case in which, but for Mr Purcell’s admissions, either the offence would never have come to light or it would have been difficult to prove in a defended hearing. The judge noted that in *R v Hamid* [2006] [NSWCCA 302](#), Johnson J (with whom Hunt AJA and Latham J agreed) said at [77]:

An adequate account of domestic violence should recognise that it typically involves the exercise of power and control over the victim, is commonly recurrent, may escalate over time, may affect a number of people beyond the primary target (including children, other family members and supporters of the victim) and that it contributes to the subordination of women; domestic violence typically involves the violation of trust by someone with whom the victim shares, or has shared, an intimate relationship; the offender may no longer need to resort to violence in order to instil fear and control.

Penfold J observed:

[48] ... the incident giving rise to Mr Purcell's conviction, and its source in Mr Purcell's determination to examine the victim's mobile phone, seem to reflect both an attempt to exercise power or control over his former wife and a belief that this was justified. For this reason, the incident as a whole may legitimately be treated as more serious than it would have been if the TV had been destroyed in anger or frustration generated by some event unrelated to conflict between Mr Purcell and his former wife.