

***Norris v Sanderson* [2007] NTSC 1 (12 January 2007) – Northern Territory Supreme Court**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle in relation to sentencing.

‘Breach of domestic violence order’ – ‘Emotional abuse’ – ‘Manifestly excessive’ – ‘Offending while on bail’ – ‘Sentencing’ – ‘Unlawful damage’

Charges: Unlawful damage, breach of domestic violence order

Appeal type: Appeal against sentence

Facts: The appellant was the subject of a domestic violence order to protect his girlfriend (the victim) made under the repealed *Domestic Violence Act 1992* (NT). He had a history of repeatedly breaching domestic violence orders both in relation to the victim and a previous girlfriend. The offending subject to the appeal was constituted by a series of events. On the first occasion the appellant went to visit the victim. In an attempt to prevent him from entering, the victim locked the door. As a result, the appellant punched the front window causing it to shatter and kicked the security door (count 1). A few days later the appellant telephoned the victim and then approached her at a nightclub (counts 2 and 3). He was subsequently arrested and granted bail. While on bail he again breached the domestic violence order by driving with the victim (count 4). He was arrested and remanded in custody only to be released on bail again. One month later he drove to the victim’s house, entered her front yard and yelled and swore at the victim (count 5). In relation to this conduct, the appellant was charged and convicted of one count of unlawful damage (count 1) and four counts of breaching a domestic violence order (counts 2-5). The effective sentence imposed by the magistrate was 140 days’ imprisonment, of which 70 days’ were suspended upon conditions providing for supervision. This comprised of:

- > Count 1: 60 days’ imprisonment
- > Counts 2 and 3: 30 days’ imprisonment, 20 days to be concurrent on the sentence imposed on count 1
- > Count 4: 30 days’ imprisonment cumulative upon counts 1-3, wholly suspended on commencement
- > Count 5: 40 days’ imprisonment cumulative upon counts 1-3, wholly suspended on commencement

Issue: Whether the sentence was manifestly excessive.

Decision and reasoning: The appeal was dismissed. The magistrate did not err in his considerations and the sentence imposed was open to him to make.

The offending in relation to count 1 was made more serious when considering the surrounding circumstances of the offending. The appellant's response to being locked out by the victim was an 'immediate, frightening and explosive outburst of violence' ([19]). While the appellant did not have any prior convictions for unlawful damage, he had several convictions for offences of violence and it was the violent nature of this conduct that made the offending so serious in the circumstances.

In relation to the breaches of the domestic violence order, the submission that the magistrate placed too much weight on the appellant's criminal history was rejected. The prior convictions provided context for the offending and highlighted the culpability of the appellant. The appellant's counsel also submitted the appellant had good prospects of rehabilitating when considering, amongst other factors, his youth, willingness to undertake counselling, good employment record and the ongoing support of the victim. While the magistrate regarded the appellant's chances of rehabilitation with caution, he nonetheless considered these relevant factors and did not err in doing so.

The sentence was not manifestly excessive. The appellant had a total of 11 prior convictions for failing to comply with a domestic violence order and one prior conviction of aggravated assault. Despite this history, he continued to act in defiance of the orders with full awareness of the consequences. This conflicts with the objective that victims 'have confidence that restraining orders made are backed by penalties that will be applied in the event of a breach' ([33]). In the circumstances of this prior offending, a period of imprisonment was reasonable to deter the appellant and others from committing such offences.