

***Semkin v Verity* [2011] NTSC 12 (15 February 2011) – Northern Territory Supreme Court**

‘Appeal against sentence’ – ‘Breach of domestic violence order’ – ‘Deterrence’ – ‘History of abuse’ – ‘Manifestly excessive’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Totality’

Charges: Breach of domestic violence order

Appeal type: Appeal against sentence

Facts: The appellant was the subject of a domestic violence order to protect his former partner (the victim). While serving a sentence of imprisonment for previous offences committed against the victim, the appellant breached the domestic violence order by sending the victim a letter. The content of the letter included apologising for his actions and for harming the victim. When asked why he sent the letter, the appellant replied ‘Broken heart, saying sorry and all that’ and that he was not aware it was a contravention of the domestic violence order. The appellant was convicted and sentenced to three months’ imprisonment to commence at the end of his prior sentence.

The full no-contact domestic violence order was initially ordered after the appellant entered the victim’s house, removed all her clothes and burned them in the garden while she was not home. Following this, the appellant breached the order by texting the victim 17 times. The messages included threatening the victim, threatening self-harm and declaring his ‘undying love’. As a result of this conduct, the appellant was fined \$750 and placed on a good behaviour bond. Sometime after recommencing their relationship, the appellant went to the victim’s workplace with two knives and a hammer and subsequently chased, punched and kicked the victim and threatened to kill her. The appellant was charged and convicted of aggravated assault, for which he was serving a term of imprisonment at the time of the current offending.

Issues:

- > Whether the sentence was manifestly excessive.
- > Whether the magistrate erred in applying the principle of totality.

Decision and reasoning: The appeal was dismissed.

- > Riley CJ rejected the argument that the appellant’s moral culpability was reduced because he claimed to be unaware that sending the letter was a breach of the domestic violence order. He had repeatedly breached the domestic violence order, on one occasion for sending text messages to the victim. Therefore, he should have known the conditions of the order and that sending a letter constituted a breach of it. The fact that his offending occurred while in custody for another offence against the victim

was an aggravating factor. While the appellant had made efforts to rehabilitate whilst in prison, the need for personal deterrence was still a significant factor in sentencing considering his history of offending. When considering these circumstances as a whole, the sentence imposed was not manifestly excessive.

- The magistrate did not err in applying the principle of totality. The current offending was not part of a course of offending. Sending the letter in breach of the domestic violence order was a separate incident to the aggravated assault that the appellant was in custody for. Therefore, the current offending required a separate sentence and the magistrate did not err in ordering the sentence to be served cumulatively.