

## ***Midjumbani v Moore* [2009] NTSC 27 (26 June 2009) – Northern Territory Supreme Court**

‘Breach of domestic violence order’ – ‘Domestic violence order’ – ‘Emotional and psychological abuse’ – ‘Gender of offender’ – ‘Manifestly excessive’ – ‘Sentencing’

Charge: Breach of domestic violence order

Appeal type: Appeal against sentence

Facts: The appellant was the subject of a domestic violence order that restrained her from contacting or approaching her former partner (the victim) directly or indirectly while intoxicated, among other restrictions. On the day of offending, the appellant went to the victim’s home while intoxicated, verbally abused him and threatened to arrange for the victim to be harmed and killed. Approximately two hours later, the appellant returned and threatened that her family would kill the victim. She then picked up a large rock causing the victim to retreat back inside his home. In relation to this conduct the appellant was charged, pleaded guilty and convicted of two counts of breaching a domestic violence order. She was sentenced to seven days’ imprisonment on each charge, to be served concurrently.

The appellant had previously been convicted of breaching a domestic violence order, possession of cannabis, and two offences involving being armed with an offensive weapon. In support of the appellant, it was submitted she occasionally cared for the victim who was suffering from cancer, she entered an early plea of guilty and she had shown remorse.

Issues: The grounds of appeal were:

- > The magistrate erred in interpreting s 121(3) of the *Domestic and Family Violence Act 2007* (NT) and failed to consider whether ‘particular circumstances’ existed under s 121(3)(b);
- > The sentence was manifestly excessive; and
- > The magistrate failed to properly consider the gender of the appellant.

Decision and reasoning: The appeal was dismissed.

- > Section 121 of the Act must be read altogether. Subject to s 121(3), a court must record a conviction and sentence a person to at least seven days’ imprisonment if that person has previously been found guilty of breaching a domestic violence order. This mandatory minimum sentence will always apply unless no harm has been caused to the victim: s 121(3)(a). If harm is not caused, the court must consider the particular circumstances of the offence to determine if it is appropriate to record a conviction and sentence the person to at least seven days’ imprisonment: s 121(3)(b). The magistrate

did not err in its interpretation or application of this provision.

- > The magistrate did not err in sentencing the appellant in accordance with s 121 of the Act. However, Riley J noted that even if he did find error he would not have interfered with the sentence imposed. The sentence of seven days to be served concurrently for each breach of the domestic violence order was appropriate. The appellant failed to establish that the magistrate erred in sentencing or that the sentences imposed were manifestly excessive.
- > The appellant submitted that the magistrate failed to properly consider her gender as a female. Riley J did not accept that the gender of the offender is a relevant matter that should have been taken into consideration by the magistrate.