

***Manakgu v Russell* [2013] NTSC 48 (14 August 2013) – Northern Territory Supreme Court**

‘Aboriginal and torres strait islander people’ – ‘Alcohol’ – ‘Breach of domestic violence order’ – ‘Manifestly excessive’ – ‘Sentencing’ – ‘Situational breach’

Charge: Breach of domestic violence order

Appeal type: Appeal against sentence

Facts: The appellant was the subject of a domestic violence order in favour of his wife (the protected person) that restrained him from ‘approaching, entering or remaining in the company of the protected person when consuming alcohol... or when under the influence of alcohol’. After attending the Gunbalunya Sports and Social Club and drinking 13 cans of beer, the appellant went to the protected person’s home. He was arrested and pleaded guilty to breaching the domestic violence order, which had been in force for nine months. The order had been complied with for the previous nine months, but the appellant had been in prison for five of them. The appellant had two prior convictions for breach of domestic violence orders. In considering this repeat offending and history of failing to comply with orders, the magistrate sentenced the appellant to 3 months imprisonment.

Issue: Whether the sentence imposed was manifestly excessive in all of the circumstances?

Decision and Reasoning: The appeal was allowed. Barr J observed: ‘Generally speaking, a breach where harm or fear of harm is caused to the protected person is worse than a merely ‘situational’ breach. The appellant’s breach was a low order ‘situational’ breach. No harm or fear of harm was caused’ ([16]). Barr J noted that in general, ‘the more egregious the conduct in terms of causing harm or fear of harm to the protected person, the greater the probable degree of contempt for the court’s order or orders’ ([17]). On the facts, the magistrate erred in assessing the appellant’s conduct as more than a ‘minor case’. While some actual imprisonment was justified for reasons of specific and general deterrence, the offending was at the low end of the scale of seriousness at [23]. The sentence of three months’ imprisonment was quashed, and a sentence of 15 days’ imprisonment was imposed.