

## ***Arnott v Blitner* [2020] NTSC 63 (1 October 2020) – Northern Territory Supreme Court**

‘Breach of bail conditions’ – ‘Contravention of protection order’ – ‘Misuse of alcohol or drugs by the perpetrator’ – ‘No harm caused to protected person’ – ‘Prosecution appeal against sentence’ – ‘Protection order’

Charges: Contravening a Domestic Violence Order (DVO) x 1; Breach of bail x 1.

Proceedings: Prosecution appeal against sentence.

Facts: The male respondent breached a DVO protecting his female partner by being heavily intoxicated in her company. There was no harm to the protected person. The respondent later breached bail by consuming alcohol. He pleaded guilty and was sentenced to 4 days imprisonment for breach of the DVO and 3 days imprisonment for the breach of bail, to be served cumulatively.

Grounds of appeal: In relation to the sentence for breaching the DVO –

1. The sentencing judge erred in applying s 121(2) and 121(3) of the *Domestic and Family Violence Act 2007* (NT).
2. The learned sentencing judge erred in imposing a sentence which was manifestly inadequate in all the circumstances.

Held: Appeal dismissed.

*Ground 1*: There was no error in applying s 121(2) and (3) of the Act. The words “in the particular circumstances of the offence” do not set a standard which the circumstances must meet or impose an additional test. The legislative purpose of s 121(3) is to ameliorate potential injustice arising from mandatory sentencing. It maintains the court’s discretion not to impose the mandatory minimum in circumstances where the breach of a DVO does not result in harm to the protected person and where the court is satisfied it is not appropriate to record a conviction and sentence the person “in the particular circumstances of the offence” (meaning the specific, individual circumstances of the offence).

*Ground 2*: The sentence was not manifestly inadequate. The respondent’s breach of the DVO did not display the kind of aggravating features that would merit the term “contemptuous”. The conduct occurred 3½ months after the DVO was served in circumstances where the respondent believed the order was finished, no harm was caused to the protected person (despite police being called to respond to a disturbance), and the respondent’s 2 previous convictions for breaching DVOs were 4 years previously.