

Gorey v O'Neill [2015] NTSC 66 (1 October 2015) – Northern Territory Supreme Court

'Alcohol' – 'Breach of domestic violence order' – 'Deterrence' – 'History of abuse' – 'Manifestly excessive' – 'Purpose of domestic violence order' – '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 restraining him from, among other conditions, approaching, contacting or remaining in the company of his wife (the victim) when consuming or under the influence of alcohol. On the day of offending, the appellant had been drinking and travelled in the car with the victim. His blood alcohol level was 0.05 per cent. The appellant claimed he was in the car with the victim to attend to matters in the administration of the estate of the victim's father-in-law. He also denied knowing that the domestic violence order was still in force. In relation to this conduct the appellant was charged, pleaded guilty and convicted of breaching the domestic violence order.

The appellant had an extensive offending history, including 16 convictions for aggravated assault, one conviction for causing grievous bodily harm and eight convictions for breaching domestic violence orders. Of these, 22 of the offences were committed against the victim. The magistrate considered this history of domestic violence offending and the need for specific deterrence together with the mitigating factor that the victim suffered no harm. The appellant was sentenced to three months imprisonment, taking into account a discount of 25 per cent for the early guilty plea.

Issue: Whether the sentence was manifestly excessive in the circumstances.

Decision and reasoning: The appeal was dismissed.

While a starting point of four months imprisonment seemed high for a 'situational breach' in which no harm was caused, it was necessary to consider the preventative and protective role of domestic violence orders. Barr J noted that 'Given the preventative purpose of DVO, the fact that the parties may have been drinking while sitting down 'in a good way', or that the offender has on the particular occasion not been aggressive or threatening or violent to the protected person, does not necessarily result in a lenient sentencing outcome for a recidivist offender' ([28]). The appellant's criminal history demonstrated that while no harm resulted from the breach, there was a real risk that physical or emotional injury could occur and protection was needed to prevent such harm. Further, it established that he had a 'continuing attitude of disobedience of the law' ([33]). Therefore, the magistrate's starting point of four months imprisonment, while on the high end of the range for the nature of the breach, was not outside the bounds of sentencing discretion.