

***Walker v Verity* [2010] NTSC 68 (7 December 2010) – Northern Territory Supreme Court**

‘Alcohol’ – ‘Breach of domestic violence order’ – ‘Deterrence’ – ‘Emotional abuse’ – ‘Exposing children’ – ‘Manifestly excessive’ – ‘Multiple breach charges’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Threat to kill’ – ‘Victim’ – ‘Victim impact statement’

Charges: Breach of domestic violence order (6 counts), threatening to kill with intent to cause fear, resisting arrest, unlawfully assault of a police officer in the execution of duty, behaving in a disorderly manner, unlawfully possessing cannabis

Appeal type: Appeal against sentence

Facts: The appellant was the subject of a domestic violence order in force to protect his daughter (the victim). The order restricted the appellant, among other conditions, from approaching, contacting or remaining in the company of the victim or at any place where the victim resided, worked or stayed while consuming or under the influence of alcohol or another intoxicating drug or substance. After consuming alcohol one day, the appellant sent a text to the victim (charge 1). He then resent this message four times before going to the victim’s home (charge 2). The victim was not home, but the appellant waited several hours for her to return (charge 3). After the victim left her home, the appellant rang the victim and swore at her (charge 4). The appellant eventually left the victim’s home after being asked several times only to return several hours later. The appellant then scratched the victim’s face (charge 5) and said ‘I love you, but I want to kill you’ (charge 6). He subsequently called her again and blamed the victim for his arrest (charge 8). Charge 7 was not referred to or specified.

In relation to this conduct the appellant was charged and convicted of (inter alia) 6 counts of breaching a domestic violence order (charges 1-5, 8) and threatening to kill with intent to cause fear (charge 6), resisting arrest, unlawfully assaulting a police officer in the execution of duty, behaving in a disorderly manner, and unlawfully possessing cannabis. The appellant was sentenced on charges 1 to 4, to a fine of \$1000; on charges 5 and 8, to 12 weeks’ imprisonment; and on charge 6, to 12 weeks’ imprisonment, each to be served concurrently with the aggregate sentence on charges 5 and 8.

In the victim impact statement, the victim explained the physical and emotional injuries she suffered as a result of her father’s domestic violence ([27]). However, the victim expressed her wish that the appellant be ordered into rehabilitation rather than sentenced to imprisonment. The magistrate did not mention this wish of the victim in his sentencing remarks.

Issues:

- > Whether the magistrate erred in failing to take into account the victim's wishes as expressed in the victim impact statement; and
- > Whether the sentences imposed for charges 5, 6 and 8 were manifestly excessive.

Decision and reasoning: The appeal was dismissed.

- > The magistrate did not err by merely failing to expressly refer to the victim impact statement. The magistrate was informed that the appellant had previously unsuccessfully attempted rehabilitation in the only two rehabilitation programs available to non-Indigenous males in the Northern Territory. Further, the victim's wishes for the appellant not to be imprisoned should not have carried great weight when considering the aggravating factor of the appellant's extensive offending history, and the need for specific and general deterrence. Barr J concluded that in domestic violence cases, the importance of general deterrence likely overrides any forgiveness on the part of the victim ([40-41]).
- > The effective sentence of 12 weeks' imprisonment for charges 5, 6 and 8 was not manifestly excessive in the circumstances. The magistrate was entitled to regard charges 5, 6 and 8 as serious. Further, the magistrate gave due consideration to the appellant's previous history of offending, including a previous threat to kill, offences of physical violence, and numerous breaches of domestic violence orders. The appellant established no error by the magistrate in sentencing, nor that the effective sentence was manifestly excessive. Therefore, both grounds failed and the appeal was dismissed.