

***Atkinson v Eaton* [2010] NTSC 72 (17 December 2010) – Northern Territory Supreme Court**

‘Alcohol’ – ‘Breach of domestic violence order’ – ‘Breach of good behaviour bond’ – ‘Deterrence’ – ‘Manifestly excessive’ – ‘Sentencing’ – ‘Totality’

Charges: Breach of domestic violence order, breach of good behaviour bond, resisting arrest

Appeal type: Appeal against sentence

Facts: The appellant and the victim were in a de facto relationship and resided together with their child and two children from the victim’s previous relationships. The appellant was the subject of a good behaviour bond with a condition that he not approach the victim when consuming or under the influence of alcohol. He was also the subject of a domestic violence order that restrained the appellant from approaching, contacting or remaining in the company of the victim or her three children (the protected persons) when consuming or under the influence of alcohol or another intoxicating drug or substance.

On the day of offending, the appellant consumed alcohol whilst in the presence of all four of the protected persons. The appellant resisted arrest and attempted to escape custody. After he was arrested the police determined his blood alcohol level was 0.172 per cent. When asked his reasons for breaching the domestic violence order, the appellant replied ‘it was her choice’. In relation to this conduct the appellant was charged, pleaded guilty and convicted of one count of breaching the good behaviour bond, one count of breaching the domestic violence order and one count of resisting arrest. The magistrate sentenced the appellant to 21 days’ imprisonment, 21 days’ imprisonment and seven days’ imprisonment, respectively. All sentences were ordered to be served concurrently, with the total effective sentence of 21 days’ imprisonment.

The appellant had previously breached the good behaviour bond and received a warning. He had also been convicted of breaching the domestic violence order, assault and aggravated assault.

Issue: Whether the sentences imposed were manifestly excessive in all the circumstances.

Decision and reasoning: The appeal was allowed and the appellant was resentenced.

The magistrate erred in imposing a term of imprisonment for the breach of the good behaviour bond. Although there had been two breaches of the bond, Blokland J held that without knowing additional information on the initial breach that received a warning, imprisonment could not be justified for the breach in question. The sentence of 21 days’ imprisonment was therefore manifestly excessive and ordered to be set aside.

The magistrate also erred in imposing a term of 21 days' imprisonment for the breach of the domestic violence order. Blokland J recognised that this was the appellant's second breach of the domestic violence order. However, although the protected persons were placed in fear, no harm resulted from the breach. Therefore, the sentence was manifestly excessive.

The appellant was re-sentenced to seven days' imprisonment for the breach of the domestic violence order and seven days' imprisonment for resisting arrest to be served concurrently. When considering the circumstances of the offence, a short term of imprisonment was justified under s 121 *Domestic and Family Violence Act 2007* (NT). Blokland J emphasised the appellant's blood alcohol reading was significant and whilst he pleaded guilty, it was not an immediate plea ([25]). Blokland J refused to suspend the sentence when considering the appellant's history of offending and the need for personal deterrence. No further sentence was imposed for breach of the good behaviour bond, as the breach occurred out of the same conduct as the breach of domestic violence order.