

***Palmer-Peckham v Westphal* [2012] NTSC 74 (28 September 2012) – Northern Territory Supreme Court**

‘Alcohol’ – ‘Breach of domestic violence order’ – ‘Following, harassing, monitoring’ – ‘Manifestly excessive’ – ‘Sentencing’

Charge: Breach of domestic violence order

Appeal type: Appeal against sentence

Facts: The appellant and victim had previously been in a relationship. The appellant was the subject of a domestic violence order that restrained him from harassing or harming the victim and approaching, entering or remaining in her company or in her place of residence or work when under the influence of alcohol or another intoxicating substance. After consuming alcohol one day, the appellant went to the victim’s mother’s house where she was living at the time. The victim was not home. He returned later that afternoon after consuming more alcohol. When the victim arrived home, the appellant allegedly assaulted her. However, there was not enough evidence to conclude this beyond reasonable doubt. In relation to this conduct the appellant was charged, pleaded guilty and was convicted of breaching the domestic violence order. The magistrate sentenced the appellant to two months’ imprisonment, suspended immediately with an operation period of 12 months.

In sentencing, the magistrate noted that the appellant had breached the domestic violence order in three respects and considered the conduct as the upper end of offending. However, the appellant had no substantial offending history and entered his guilty plea early. The magistrate accepted that while the appellant had a problem with alcohol, he had work available and had good prospects of rehabilitation. He considered the starting point of six months’ imprisonment, reduced to two months’ imprisonment wholly suspended when considering the mitigating and aggravating factors.

Issues: Whether the sentence imposed was manifestly excessive.

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

Olsson AJ considered the general approach adopted by the magistrate in order to promote general deterrence was reasonable. However, the magistrate's starting point of six months' imprisonment was very high for a first conviction when considering the victim suffered no physical or lasting emotional harm. It is not clear from the magistrate's sentencing remarks how he arrived at the ultimate reduction from six to two months' imprisonment. A reduction of 30 per cent was given for the timely plea. Beyond this, the magistrate only noted the appellant's character and prospects for rehabilitation for the further reduction. Accordingly, the sentence was so excessive as to manifest error on the part of the magistrate. Olsson AJ resented the appellant to 21 days' imprisonment, suspended immediately with an operation period of 12 months.