TZL v Commissioner of Police **[2015] QDC 171 (3 July 2015) – Queensland District Court**

'Breach of domestic violence order' – 'Criminal history' – 'Deterrence' – 'Minor breach' – 'Sentencing'

Charge/s: Breach of domestic violence order.

Appeal type: Appeal against sentence.

Facts: The appellant pleaded guilty and was convicted for contravening a domestic violence order and sentenced to 10 months' imprisonment. The order prohibited the appellant from contacting the aggrieved apart from matters in relation to their child. He breached this condition by 41 sending emails over an 11 week period, the content of some of which were not solely in relation to their child. He was released on parole on the day of sentence. The appellant had an 'appalling' (see at [21]) history of breaching protection orders – consisting of 10 total convictions of which 8 related to the aggrieved. In fact, he was on probation for these offences when this offence was committed.

Issue/s: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was upheld. Kingham DCJ acknowledged at [17] that this was an 'unusual' sentence. There was no physical violence, actual or threatened. There was no intimidation or any harassing or controlling behaviour. While there were 41 emails, they were sent over an 11 week period and not all of them breached the order as some were related solely to the child. There was also one very minor personal contact at a child care centre. Kingham DCJ found these facts in combination do not warrant a sentence of imprisonment. Notwithstanding, the appellant's clear 'disdain' ([21]) for protection orders as evidenced by his criminal history warranted a strong element of personal deterrence in the sentence. However, her Honour emphasised that the purpose of the sentence was not to punish the appellant again for prior offending, and that the Magistrate, 'gave the Appellant's prior history such weight that it led to the imposition of a penalty which was disproportionate to the gravity of this offending' (See at [22]). As such, the Court concluded (while also taking into account comparable authorities) that the sentence was excessive. It was reduced to 6 months. The immediate parole release was not changed.