

***PFM v Queensland Police Service* [2017] QDC 210 (11 August 2017) – Queensland District Court**

‘Contravention of domestic violence order’ – ‘Extending protection order’ – ‘History of domestic violence offences’ – ‘Parole’ – ‘Post-separation abuse’ – ‘Re-sentence’ – ‘Totality’

Charges: Contravention of domestic violence order x 1.

Appeal type: Appeal against sentence.

Facts: The complainant had obtained a domestic violence order with the appellant as the aggrieved. The order contained a condition that the appellant was not to have contact with the complainant. In contravention of this condition, the appellant travelled to the complainant’s house, stood outside, and called out to her and her son ([16]). The appellant had a criminal history including 13 breaches of domestic violence orders, spanning 12 years to 2015. The appellant was sentenced to 4 months’ imprisonment.

Issues: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was allowed for two reasons: first, the sentencing judge erred in not applying the principle of totality; and second, the sentence was manifestly excessive.

In relation to totality, the appellant had previously been sentenced for a failure to appear, and was sentenced to 5 months imprisonment. Since the appellant was on parole, the imposition of the new sentence automatically cancelled his parole. Therefore, the effect of the sentence was to impose a 9-month sentence. The magistrate did not treat the matter in this way, and calculated the parole eligibility date as one third of the 4-month sentence ([40]-[41]).

In relation to the length of the sentence, the sentence was outside the appropriate range. Morzone QC DCJ stated that ‘it seems that the Court allowed the appellant’s previous offending to overwhelm other material considerations and the nature and seriousness of the offending subject of the sentence’ ([42]). The offending conduct was in the lower range, and would not normally attract a sentence of imprisonment. However, the nature of offending in the context of previous past breaches of domestic violence offences warranted a period of one month’s imprisonment ([64]).

The judge determined that the extension of the protection order to was ‘necessary or desirable for the order to regulate the parties’ communication and contact for that period. By that time, the parties’ parental relationship and need for contact will change as the child matures into his early teens.’ [70]