BKA v Commissioner of Police **[2020] QDC 10 (19 February 2020) – Queensland District Court**

'Breaches of protection orders' – 'Guilty plea' – 'History of domestic and family violence' – 'Lengthy criminal history' – 'Protection order' – 'Sentencing considerations'

Charges: 1 x contravention of a Domestic Violence Order (DVO)

Case type: Appeal against sentence

Facts: The appellant man was convicted, on his own plea of guilty, of one offence of contravention of a DVO, and was sentenced to a term of 6 months' imprisonment, cumulative on the terms of imprisonment he was then serving relating to domestic violence offences against the same woman. The contravention in question was attending the home of his former partner (the protected person) when subject to a protection order. She was clearly scared, being found by attending police hiding in a manhole in the ceiling. The present offending occurred whilst on parole and very shortly after being granted parole ([16]).

The appellant had an 'unenviable criminal history' and had been imprisoned for drug and violent offences, and had been re-sentenced on numerous occasions for breaches of bail, suspended sentences and an intensive correction order ([8]).

Issue: The sentence was manifestly excessive. Three specific errors were alleged:

- The learned Magistrate erred by not inviting submissions on a cumulative sentence
- The learned Magistrate failed to take into account the totality when setting the parole eligibility date; and
- The learned Magistrate erred by setting a parole eligibility date at the full-time date of the appellant's current sentence.

Although the submissions largely focused on the parole eligibility date, it was also contended that the head sentence should have been ordered to be served concurrently ([2]-[4]).
Held:

Byrne DCJ allowed the appeal, set aside the order of the sentencing Magistrate insofar as it related to the appellant's parole eligibility, and ordered that the appellant be eligible for parole on the date of the delivery of the judgment instead ([27]). Byrne DCJ accepted that it was an error to impose the cumulative sentence without first inviting submissions as to that possibility. It was noted at [18] that the Magistrate raised concerns about imposing another suspended sentence given the appellant's past history of breaching such orders, but did not raise the possibility of ordering that the term be served cumulatively on the current period of imprisonment. According to Byrne DCJ, if the Magistrate did this, it would inevitably have elicited submissions as to the appropriate point for parole eligibility. It could not be said that this was an 'error without consequence'.

The offending clearly affected the aggrieved's safety and welfare, although the appellant did not inflict any actual physical violence on her on that occasion. Given that the offending occurred so soon after the appellant had been released on parole for offending involving the same woman, and in light of the need for specific deterrence given the appellant's history for breaching court orders, Byrne DCJ held that a head sentence of 6 months cumulative on the period of imprisonment the appellant was already serving was appropriate ([19]). However, the extension of the parole release date was excessive, especially in light of the head sentence of 6 months. His Honour considered that this in itself would be sufficient grounds to allow the appeal ([21]). The lengthy deferral of the parole eligibility date failed to reflect the appellant's guilty plea, that he did not inflict any physical violence and that he had served about 3 months of pre-sentence custody that could not be declared as time already served under the sentence ([24]).