Walker v Verity [2010] NTSC 68

PARTIES:	GLEN JOHN WALKER
	v
	BRETT JUSTIN VERITY
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING APPELLATE JURISDICTION
FILE NO:	JA 47 of 2010 (21030392)
DELIVERED:	7 December 2010
HEARING DATES:	12 and 23 November 2010
JUDGMENT OF:	BARR J
APPEAL FROM:	TRIGG SM

CATCHWORDS:

CRIMINAL LAW – Sentencing – contravene domestic violence order – make threat to kill

APPEAL AGAINST SEVERITY OF SENTENCE – Whether magistrate erred in failing to consider victim's wishes in sentencing – whether sentence manifestly excessive – appeal dismissed.

Criminal Code (NT) s 166; *Domestic and Family Violence Act 2007* (NT) s 120, s 121; *Sentencing Act* (NT) s 5, s 52, s 106A, s 106B.

Amagula v White (1998) NTSC; *Boyle* (1987) 34 A Crim R 202; *Coulthard v Kennedy* (1992) 60 A Crim R 415; *Jane Miyatatawuy* (1996) 87 A Crim R 574; *R v LFJ* [2009] VSCA; *Tilley* (1991) 53 A Crim R 1, cited.

Cranssen v R (1936) 55 CLR 509; *Henda v Cahill* [2009] NTSC 63; *Hoare v The Queen* (1989) 167 CLR 348; *Ingram v Littman*; *Ingram v Verity* [2009] NTSC 70; *Kuiper v Brennan* [2006] NTSC 54; *Mace v Hales* [2002] NTSC 15; *Midjumbani v Moore* [2009] NTSC 27; *Olsen v Sims* [2010] NTCA 8; *R v Rowe* (1996) 89 A Crim R 467; *Regina v Kershaw* [2005] NSWCCA 56; *Simon v Garner* [2007] NTSC 33; *Veen v The Queen* (No 2) (1988) 164 CLR 465, followed.

REPRESENTATION:

Counsel:

Appellant:	Self-represented
Respondent:	S Lau

Solicitors:

Appellant:	Self-represented
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Walker v Verity [2010] NTSC 68
No JA 47 of 2010 (21030392)

BETWEEN:

GLEN JOHN WALKER
Appellant:

AND:

BRETT JUSTIN VERITY
Respondent:

CORAM: BARR J

REASONS FOR JUDGMENT

(Delivered 7 December 2010)

[1] On 13 September 2010 the appellant pleaded guilty in the Darwin Court of Summary Jurisdiction to six offences contrary to s 120(1) of the *Domestic and Family Violence Act 2007* (NT) of engaging in conduct that resulted in a contravention of a Domestic Violence Order (known as a 'DVO').

[2] The appellant also pleaded guilty to the offence of making a threat to kill his partner, SC, with intent to cause fear, the threat being of such a nature as to cause fear to any person of reasonable firmness and courage, contrary to s 166 of the *Criminal Code* (NT).

[3] The appellant also pleaded guilty to several other offences, including resisting a member of the police force in the execution of his duty,

unlawfully assaulting a police officer in the execution of his duty, behaving in a disorderly manner at the Darwin Police Station, and unlawfully possessing cannabis plant material.

[4] The offending occurred on 9 September 2010.

[5] The appeal to this Court is concerned with the severity of sentence on three of the charges, described as charges 5, 6 and 8. However, in order to put the sentences for those three charges into perspective, it will be necessary to relevantly summarise the admitted facts which were read to the Darwin Court of Summary Jurisdiction on 13 September 2010 after the appellant had entered pleas of guilty to the various charges.

Summary of facts

[6] On 15 August 2010 the appellant was served with a DVO which identified SC and her daughter as 'protected persons' and which restrained the appellant from doing any of the following:-

1. Approaching, contacting or remaining in the company of the protected persons ('contact' to include by email, phone, text messages, facsimile, email or other forms of communication) when consuming alcohol or another intoxicating drug or substance, or when under the influence of alcohol or another intoxicating drug or substance;

2. Approaching, entering or remaining at any place where the protected persons are living, working or staying, visiting or located, when consuming alcohol or another intoxicating drug or substance, or when under the influence of alcohol or another intoxicating drug or substance;

3. Causing harm or attempting or threatening to cause harm to the protected persons;

4. Causing damage to the property or attempting or threatening to cause damage to the property of the protected persons;

5. Intimidating or harassing or verbally abusing the protected persons.

[7] The DVO was to be in force until 1 June 2011.

[8] The admitted offending thus occurred less than a month after the DVO was served on the appellant.

[9] On 9 September 2010, at some time prior to 2.00 pm, the appellant consumed a quantity of alcohol and became intoxicated. At about 2.00 pm, the appellant sent a text message to SC stating: "I have had a few beers but I'm all right. I want you to meet me after work to go fishing." The appellant re-sent this text message a further four times. At some time prior to 5.00 pm, the appellant attended the home of SC. She was not at home at that time. However, when she returned home at 5.00 pm, the appellant was still at her residence, in an intoxicated state. SC told the appellant to leave the home, before then going out herself for an hour or so.

[10] While SC was out, the appellant rang her on her mobile phone and said to her: "You are fucked in the head and I'm all right."

[11] At 6.30 pm SC arrived home again and found the appellant there. She told him to leave and he left.

[12] However, at 10.10 pm, the appellant re-attended at SC's home, where he unlocked a rear security door. When he was met by SC, the appellant used

his right hand to push the left side of SC's face, scratching her on the face as he did so.

[13] The appellant then said to SC: "I love you, but I will kill you." Fearful for her safety, SC fled her home and called the police. The police attended and observed the appellant sitting on a couch drinking Melbourne Bitter. The police informed the appellant that he was under arrest for breaching his DVO.

[14] The appellant then rang SC from his mobile phone to her mobile phone and said to her: "S, you fucking bitch slut, this is what you've now fucking done." Police relieved the appellant of his mobile phone and the appellant became aggressive and physically violent towards them. He was restrained and handcuffed.

[15] Relevant to this appeal: charge 5 related to the incident at 10.10 pm when the appellant re-attended at SC's home in an intoxicated state and pushed her in the face, scratching her; charge 6, threat to kill, related to the statement: "I love you, but I will kill you."; and charge 8 related to the mobile phone call in the presence of police when the appellant verbally abused SC.

Proceedings in the Court of Summary Jurisdiction

[16] After the admitted facts for all offences were read to the court on 13 September 2010, submissions were made by the appellant's counsel. In

mitigation, counsel for the appellant admitted that he had been "greatly affected by cannabis and alcohol" on the evening of 9 September. It was also submitted (although not specifically in relation to the events of the evening of 9 September) that he used cannabis for pain relief and to assist him to sleep.

[17] On 14 September 2010, the appellant was convicted on all offences. On charges 1 to 4 (the less serious DVO contraventions) he was fined an aggregate fine of $1,000 with $160 in victims' levies. On charges 5 and 8, which were considered by the learned magistrate to be more serious DVO contraventions, the appellant was sentenced to an aggregate period of 12 weeks' imprisonment. The maximum penalty for each of those offences was imprisonment for two years. On charge 6, threat to kill, for which the maximum penalty was imprisonment for seven years, the appellant was sentenced to 12 weeks' imprisonment to be served concurrently with the aggregate sentence on charges 5 and 8.

[18] In making an assessment as to the criminality of the appellant on the various charges, the learned magistrate differentiated charges 5 and 8 from charges 1 to 4 on the basis of their relative gravity. His Honour said this:-

> "I consider that, having gone through the précis, a number of the offences in relation to breaching domestic violence order are, in my view, not as serious as the others. I have taken the view that Charges 1, 2, 3 and 4 on complaint relate to him breaching it by drinking. But by the time I get to Charge 5, I consider that the breach then is not only by drinking but also, in relation to that, it involved assaulting the victim; using his right hand he pushed the left side of her face, scratching it as he did so.

> In relation to Charge 8, I take that to be not only a breach by drinking but for phoning the victim in the presence of police and, effectively, abusing her over the phone, as per the words in the précis as admitted to, that is more serious."

[19] The learned magistrate did not specifically comment on the facts of charge 6, the threat to kill charge. On the agreed facts, the threat was made immediately after the DVO breach constituting charge 5. His Honour clearly took the view that charge 6 was part of the same sequence of offending as charges 5 and 8. However, his remarks indicate that he was aware he could not include the sentence for charge 6 within the aggregate sentence for charges 5 and 8 because charge 6 was charged on indictment, whereas charges 5 and 8 were on complaint (see s 52(1) *Sentencing Act* (NT)). Nonetheless, the same effect was achieved by his Honour's order that the sentence on charge 6 should be served concurrently with the aggregate sentence on charges 5 and 8.

[20] There is no doubt that his Honour had full regard to and properly applied the totality principle in relation to sentencing on charges 5, 6 and 8 by ordering the two 12-week sentences to be served concurrently. However, the appellant's arguments on appeal were directed more to the severity of the effective 12-week sentence, as appears from the amended notice of appeal.

Grounds of appeal

[21] On 23 September 2010, a notice of appeal was filed by the appellant which stated one ground of appeal as follows:-

> "The Magistrate made an error in sentencing the defendant to 12 weeks imprisonment for charges 5, 6 and 8."

[22] On 12 November 2010, at a directions hearing, the appellant was given leave to amend the notice of appeal. The amended notice of appeal specifies two errors on the part of the learned magistrate, namely:-

1. The learned magistrate failed to take into account or properly take into account the victim's wishes as expressed in her victim impact statement; and

2. The sentences imposed for charges 5, 6 and 8 were manifestly excessive.

[23] I now deal with those grounds.

Ground 1 – the victim's wishes

[24] It is necessary to say something about the statutory basis for victim impact statements and their use in the sentencing process.

[25] A 'victim impact statement' is an oral or written statement prepared for the purposes of s 106B(1) *Sentencing Act* (NT) containing details of the harm suffered by a victim arising from the offence – see s 106A of the Act. The victim impact statement may also contain a statement as to the victim's wishes in respect of the order that the court may make in relation to the relevant offence – see s 106B(5A) of the Act.

[26] Pursuant to s 106B(4) of the Act, the court must consider any victim impact statement in relation to an offence before sentencing for that offence.

[27] A victim impact statement was tendered by the prosecutor on 13 September 2010. The statement was a two-page pro forma document completed and signed by SC. In that victim impact statement, SC wrote as follows (under those headings on the form where she responded):-

> "Physical
>
> Glen cannot remember what he does but he does get violent and push me around. I have a skin complaint which means I bruise really easily and he has always been aware of this so he knows he will hurt me. He always says sorry afterwards when he sees the bruises. Tonight he apologised for the bruise on my face and said he didn't mean to do it.
>
> Emotional
>
> I am afraid when Glen consumes too much alcohol because he loses control and is really not aware of the effect it has on his personality. He loses control and even though he says he would not hurt me, he does. I have tried to help him many times but realise I can do no more. It really is like a monster inside is unleashed when he drinks and he cannot remember afterwards what he has said or done. When he drinks he consumes large amounts of alcohol.
>
> Other relevant information
>
> I have tried to help him but I can't any more and need to look after myself.
>
> Sentence
>
> I feel very strongly that Glen needs to be ordered into rehab rather than jail. He needs help to overcome his alcoholism and violence associated with drinking to excess. He needs long-term professional help. Jail will just make him angry and not help solve his problem."

[28] In his sentencing remarks on 14 September 2010, the learned magistrate made no mention of the victim's wish for the appellant to be "ordered into

rehab rather than jail". Indeed, his Honour made no reference at all to the victim impact statement.

[29] The appellant contends that the victim's wishes as expressed in the victim impact statement were not considered or were not properly considered in the course of sentencing. The appellant submits that because the victim urged that he not be sent to gaol, he should not have been sentenced to imprisonment on charges 5, 6 and 8.

[30] The respondent submits that the victim impact statement was tendered on sentence and therefore "it cannot be contended that the learned magistrate failed to take this matter into account". According to the respondent, the question then is whether the victim impact statement was given appropriate weight. In this submission, the respondent relies on *R v LFJ*[1], a case in which one of the grounds of appeal was that the sentencing judge had erred in failing to accord any or sufficient weight to the attitude of the victim, the offender's son, as expressed in his victim impact statement. However, the sentencing judge there made specific reference to the contents of the son's victim impact statement, citing it as an example of the capacity of children to love their parents even when they commit crimes against them. Therefore, in dealing with the relevant ground of appeal, the Victorian Court of Appeal said at [16]:-

> "As already noted, the judge expressly referred to what the son had said in his victim impact statement. *It cannot, in our view, be*

[1] [2009] VSCA 134.

> *contended that her Honour failed to take this matter into account*. Instead, the question is whether it was given appropriate weight. As with all questions of weight, the only way in which the appeal Court can decide the question is by reviewing the sentence ultimately imposed and asking whether that result was reasonably open to a judge who gave appropriate weight to all relevant factors. …". [italic emphasis added]

[31] Thus, the Victorian Court of Appeal was satisfied that the sentencing judge had taken into account the victim's attitude, not because the victim impact statement had been tendered on sentence, but because the sentencing judge had specifically referred to it.

[32] That is not the case here. As mentioned above, the learned magistrate made no reference at all to the victim impact statement. In my view however, that does not indicate error in the sentencing process which took place in the court below, for the several reasons which I now set out.

[33] First, the failure to specifically mention the victim's belief that the appellant needed "to be ordered into rehab rather than jail" does not mean that the magistrate did not consider the victim impact statement, or that part of the victim impact statement, or the particular issue that part raised. When considering ex tempore reasons for sentence delivered by magistrates in busy courts an appellate court is usually entitled to assume that the magistrate has considered all matters which are necessarily implicit in the conclusion reached. It should not be inferred that a magistrate did not consider all of the relevant material merely because the magistrate failed to specifically mention a particular sentencing option or a particular

submission in the course of ex tempore sentencing remarks: *Kuiper v Brennan*[2]; *Simon v Garner* [3]; *Henda v Cahil* [4] and *Ingram v Littman*; *Ingram v Verity*[5].

[34] Second, the learned magistrate was informed by counsel for the appellant that the appellant had previously unsuccessfully sought rehabilitation from what were said to be the only two residential services that could offer him assistance in the Northern Territory as a non-indigenous man: the Salvation Army and Banyan View Lodge. It was submitted that "on numerous occasions through the courts, but also off his own back he has attempted to enter these programs and has been refused entry." It was then submitted that the appellant wished to leave the Northern Territory, one reason being that he needed interstate residential rehabilitation to overcome his drug addiction. In the submitted circumstances, that is, previous refusal of entry into local residential rehabilitation programs, and the appellant's desire to leave the Northern Territory, it is difficult to conceive of an appropriate and enforceable order which the learned magistrate could have made for the purpose specified in s 5(1)(b) *Sentencing Act* (NT) to require the appellant to undergo rehabilitation. Indeed, his Honour referred to the submitted previous attempts by the appellant to enter rehabilitation and concluded as follows:-

[2] [2006] NTSC 54 at [33].
[3] [2007] NTSC 33 at [12].
[4] [2009] NTSC 63 at [10].
[5] [2009] NTSC 70 at [13].

> "His efforts to seek help in relation to those matters have not been successful simply, it seems, because he is not welcome to attend at some of the places in Darwin where he might go for rehabilitative assistance and I'm led to believe that that may well be partly due to the defendant's own inherent problems rather than their general willingness to help."

[35] Third, with respect, SC's belief as to the desirability of a non-custodial disposition was not a matter which in my opinion should have carried any great weight in the sentencing of the appellant, because of the appellant's record of prior offending, and the need for special and general deterrence. Special and general deterrence constitute an important purpose in sentencing offenders for domestic violence, especially those who re-offend.

[36] The learned magistrate carefully analysed the appellant's extensive criminal record, including assaults and other offences committed against police officers from 1991 to 1995; an aggravated assault and threat to kill in 1997; breach of a DVO or restraining order in late 1997, which was also a breach of a suspended sentence imposed by the Supreme Court; multiple offences including failing to comply with a restraining order in November 2000, which constituted further breaches of a suspended sentence, and which triggered actual imprisonment for eight months in 2000 and 2001; interstate drug offences in 2004; a male on female assault and breach of a restraining order in April 2006; three separate breaches of a restraining order in January 2009; and, in November 2009, various offences against police members which also constituted a breach of his then current suspended sentence. Finally, he was charged and convicted of a breach of a DVO in June 2010.

[37] Given the appellant's record, it is hardly surprising that the learned Magistrate made the following remarks prior to sentencing the appellant: -

> "The defendant has, even prior to the current offending, he has some six breaches of suspended sentences on his record; he has some eight offences of violence in relation to assaults; he has some 10 priors for breaching domestic violence orders in addition to these matters and he's therefore shown a complete disregard for the orders of the court and an unwillingness or inability to comply with them. Clearly, he has some very serious alcohol and drug issues but he also has some serious other issues that he needs to address. For whatever reason, he has an attitude towards police, he needs to change that. He also appears to have an attitude towards women which needs changing as well. He has assaults against females in the past, with multiple breaches of domestic violence order. It is clear that this relationship with his current partner is one fraught with disaster and he needs to be rid of that relationship and she needs to be rid of him. I consider that because of the multiple times the defendant has had the benefit of a suspended or partly suspended sentences of imprisonment, and given the desire that he leave the Northern Territory and get away, but it's not desirable that any part of the current sentence be suspended, I consider it's time he starts serving it."

[38] It should be acknowledged that the weight to be given to a victim's wishes in relation to sentencing may vary from case to case, as Kearney J explained in *Amagula v White*[6]:-

> "As far as concerns the weight to be given to a victim's wishes as regards penalty, each case depends on its own circumstances. In somewhat similar circumstances in *Coulthard v Kennedy* (1992) 60 A Crim R 415 at 417 Bollen J said:
>
> > "Sometimes no weight should be given to the wishes of the victim. Sometimes considerable weight should be given. Sometimes perhaps I might call "medium weight" should be given to those wishes. It all depends. The court must take into account the injuries, loss and pain suffered and endured by a victim of an assault. I think wishes can rarely be decisive.""

[6] Unreported, Supreme Court of the Northern Territory, Kearney J, 7 January 1998.

[39] In *Jane Miyatatawuy*[7], the wishes of the Aboriginal community - as distinct from those of the victim - were taken into account in mitigation. An intoxicated wife who had stabbed her husband in the chest in the course of an argument was released on a good behaviour bond. The husband had sought that she not be punished because she had already been dealt with under Aboriginal customary law and, if she were imprisoned, he feared that the marriage would be destroyed in the eyes of the Aboriginal community. The then Chief Justice observed at 580:

> "I am not satisfied that the wishes of a victim of an offence in relation to the sentencing of the offender can usually be relevant. The criminal law is related to public wrongs, not issues which can be settled privately. But here, it was not so much the wishes of the victim that were placed before the court, but the wishes of the relevant community of which the victim also happened to be a leading member and on behalf of which he spoke. Those wishes may not be permitted to override the discharge of the judge's duty, but have been taken into account as a mitigatory factor. Similarly, hardship to the victim, or other member of the offender's family, which may arise from the penalty imposed, although generally an irrelevant consideration, may be taken into account. (See, eg *Boyle* (1987) 34 A Crim R 202 and *Tilley* (1991) 53 A Crim R 1.)"

[40] I accept the respondent's submission that in domestic violence cases such as the present, the importance of general deterrence may well override any relevance that evidence of forgiveness might have: *R v Rowe*[8]; that in cases involving domestic violence, the sentencing process is not and should not be in the hands of complainant victims; and that the merciful or relenting attitude of a complainant does not reduce the gravity of the offence and does

[7] (1996) 87 A Crim R 574.
[8] (1996) 89 A Crim R 467 at 473.

not have much effect on the interest of justice in imposing an appropriate sentence: *Regina v Kershaw*[9]. In my opinion those statements of principle are equally applicable here, where the victim's attitude was not one of forgiveness as such, but rather one of claimed insight into the appellant's alcoholism, leading to her belief as to the need for a non-custodial disposition.

[41] In the present case, it was appropriate that the learned magistrate give no weight to the views expressed by the victim, sincere though she may have been in holding those views. The circumstances of the offending, and of the offender, justified a sentence of actual imprisonment, without suspension or partial suspension.

[42] The ground of appeal that the learned magistrate did not sentence in accordance with the victim's wishes must fail.

Ground 2 – manifest excess

[43] The appellant contends that the sentence of 12 weeks imprisonment on charges 5, 6 and 8 was manifestly excessive.

[44] A basic principle of sentencing law is that a sentence of imprisonment imposed by a court should never exceed that which can be justified as appropriate or proportionate to the gravity of the crime considered in the

[9] [2005] NSWCCA 56 at [24].

light of its *objective* circumstances: *Hoare v The Queen*[10]. A relevant subsidiary principle is that the antecedent criminal history of an offender is a factor which may be taken into account in determining the sentence to be imposed, but it cannot be given such weight as to lead to the imposition of a penalty which is disproportionate to the gravity of the instant offence, since to do so would be to impose a fresh penalty for past offences: *Veen v The Queen* (No 2)[11]. Antecedent criminal history is relevant to show whether the instant offence is an uncharacteristic aberration or whether the offender has manifested in his commission of the instant offence a continuing attitude of disobedience of the law: *Veen*[12].

[45] The learned magistrate did not in sentencing refer to the appellant's pleas of guilty to all the charges before the Court of Summary Jurisdiction and indicate the manner and extent to which they were taken into account. However, there is no ground of appeal suggesting that the learned magistrate failed to adequately recognize and make allowance for the appellant's pleas of guilty, and in the circumstances this court would be reluctant to infer that an experienced magistrate did not make appropriate allowance for those guilty pleas.

[46] On the assumption that an appropriate discount (and I assume 25 per cent) was allowed for the appellant's pleas of guilty entered at an early opportunity, I approach my consideration of possible manifest excess by

[10] (1989) 167 CLR 348 at 354.
[11] (1988) 164 CLR 465 at 477.
[12] (1988) 164 CLR 465 at 477.

assuming a head sentence for charges 5, 6 and 8 in the order of 16 weeks, less the putative discount of 25 per cent, to then arrive at the effective sentence imposed by the learned magistrate of 12 weeks.

[47] The question then becomes: was an effective sentence of 16 weeks for charges 5, 6 and 8 within the range reasonably applicable for the offending?

[48] Pursuant to s 121(1) of the *Domestic and Family Violence Act 2007* (NT), the maximum penalty for the contravention of a DVO is two years imprisonment. The range of possible punishments starts at the low end with a finding of guilt and the recording of a conviction without any other penalty, through a range of penalties up to a maximum penalty of imprisonment for two years. The purpose of fixing a maximum penalty is to provide a guide as to the seriousness with which the community should view the offence and a directive to the court on how to weigh the gravity of this kind of offending: *Olsen v Sim*[13].

[49] I have already referred to the sentencing magistrate's remarks as to the gravity of offending involved in charges 5 and 8 – see paragraph [18] above. I would add to the learned magistrate's remarks concerning charge 8 that, in the course of the appellant's verbal abuse of the victim, he attempted to blame the victim for his own behaviour: "S, you fucking bitch slut, this is what *you've* now fucking done." [italic emphasis added] That indicates

[13] [2010] NTCA 8 at [50].

either an extraordinary lack of insight into his responsibility for his own behaviour, or worse: a lack of remorse for his offending.

[50] In my opinion, an aggregate sentence of 16 weeks (or thereabouts) for the two contraventions, given the maximum term of imprisonment of two years, was well within the range applicable, given the objective facts and circumstances of the offending.

[51] Pursuant to s 166 of the *Criminal Code*, the maximum penalty for making a threat to kill is seven years imprisonment. The range of possible punishments is thus even wider than for the DVO contraventions.

[52] The threat to kill represented a concerning escalation in the appellant's abusive behaviour towards SC, coming as it did immediately after the appellant pushed the side of SC's face and scratched her. There is a disturbing aspect to the words used: "I love you but I will kill you." An aggravating factor in respect of the appellant (see s 5(2)(f) *Sentencing Act* (NT)) was that the threat was a clear breach of condition 3 of the DVO served less than a month previously. It could be argued that the appellant was not armed at the time of making a threat, and did not behave in such a significantly violent manner as to suggest that he immediately intended to make good on his threat. However, the threat was such that the victim feared for her safety and fled her own home. It was still appropriate for the learned magistrate to sentence at the low end of the range of possible penalties, and I would regard 16 weeks (or thereabouts), given the maximum term of

imprisonment of seven years, as well within the range applicable for the objective facts and circumstances of this offending.

[53] The learned magistrate clearly regarded the offences charged as charges 5, 6 and 8 as serious. He was entitled to do so. The magistrate also took into account the appellant's history of prior offending, including a previous threat to kill, offences of physical violence, and breaches of restraining orders. He was entitled to take those matters into account as well.

[54] The principles applicable to an appeal against sentence are well known. The court will only interfere with a magistrate's sentencing discretion if it is satisfied that the sentence was manifestly excessive, for example: *Mace v Hales*[14], or that error in the exercise of the sentencing discretion is shown, such as acting on a wrong principle, or misunderstanding or wrongly assessing some salient feature of the evidence: *Cranssen v R*[15]. The presumption is that there is no error: *Midjumbani v Moore*[16] . In reviewing a sentence imposed, this Court will normally assume that the sentencing magistrate has considered all matters that are necessarily implicit in any conclusion arrived at: see the cases referred to in par [33] above.

[55] The appellant has not established error in the exercise of the sentencing discretion, and has failed to show that the effective sentence of 12 weeks for

[14] [2002] NTSC 15.
[15] (1936) 55 CLR 509 at 519-520.
[16] [2009] NTSC 27.

charges 5, 6 and 8 was manifestly excessive. The second ground of appeal must therefore fail.

Conclusion

[56] The appeal is dismissed.
