

In the matter of an application for bail by Hutchings [2011] ACTSC 83 (20 April 2011) – Australian Capital Territory Supreme Court

‘Bail’ – ‘Breach of a domestic violence order’ – ‘Breach of conditions’ – ‘Conditions of orders’ – ‘Physical violence and harm’ – ‘Special or exceptional circumstances favouring the grant of bail’ – ‘Temporary protection order’ – ‘Uncharged allegations’

Charge/s: Breach of a domestic violence order.

Appeal type: Appeal against refusal to grant bail.

Facts: Mr Hutchings breached an interim Domestic Violence Order by sending the female complainant a letter summarising his feelings towards her and the end of their relationship. This was also in breach of bail conditions imposed for a dangerous driving offence. He was granted bail with a condition included that he not contact the complainant in any way. The complainant later received a telephone call and message, alleged to be from Mr Hutchings. He was arrested and charged with breaches of the Domestic Violence Order. This activated s 9D of the *Bail Act* which provided that bail could not be granted unless there were special or exceptional circumstances favouring the grant of bail. The magistrate refused bail in those circumstances.

Issue/s: Whether there were special or exceptional circumstances favouring the grant of bail.

Decision and reasoning: The appeal was rejected. The Police were concerned that Mr Hutchings would commit further breaches of the Domestic Violence Order if allowed on bail. They noted that the complainant had made further complaints against Mr Hutchings but there was insufficient evidence to justify the commencement of proceedings. Burns J noted that the courts must be very cautious about relying on uncharged allegations but concluded that it was a concern to be taken into account [10]. While Mr Hutchings’ daughter was pregnant and needed Mr Hutchings to drive her around, Burns J noted that she could make other arrangements [12]. Accordingly, there were no special and exceptional circumstances justifying the grant of bail.