

***RYSZ v Police* [2011] SASC 167 (7 October 2011) – Supreme Court of South Australia**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘Alcohol’ – ‘Breach of restraining order’ – ‘Emotional and psychological abuse’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Threatening to cause harm’ – ‘Verbal abuse’

Charge/s: Breach of domestic violence restraining order, threatening to cause harm.

Appeal Type: Appeal against sentence.

Facts: In 1999, a domestic violence restraining order was made against the appellant in favour of his wife. In 2010, he called his wife, verbally abused her and threatened her partner. This conduct amounted to a breach of the order which prohibited him from contacting her in any way. His criminal history was relevant and included offences of violence against his wife and daughter, as well as many prior breaches of the restraining order. He had an alcohol problem. At the time of the offending, he had ceased taking anti-depressant medication and had increased his alcohol consumption. He was sentenced to four months’ imprisonment.

Issue/s: Some of the issues concerned –

1. Whether the Magistrate erred in imposing a sentence of imprisonment.
2. Whether the Magistrate erred in not partially suspending the sentence.

Decision and Reasoning: The appeal was allowed in respect of the partial suspension.

1. The appellant submitted, *inter alia* that as over 7 years had elapsed since the last breach of the order, the current offence should be seen as an isolated lapse and that the latest breach was relatively minor. This submission was rejected. Given the applicant’s history of seven previous convictions for breach of the order, leniency was not warranted. White J then discussed the nature of breaches of restraining orders and noted that their purpose is to protect vulnerable family members. His Honour at [31] then drew an analogy between breaches of domestic violence restraining orders and driving while disqualified, in that, ‘both involve some defiance of a court order; both negate the protection of the community which they were intended to achieve; and considerations of general and personal deterrence are important in each case.’ Generally, the most appropriate penalty for driving while disqualified is imprisonment. His Honour (again at [31]) then drew some distinctions between the nature of the two offences. His Honour then concluded, notwithstanding the differences between the two types of offences, ‘*I consider that, having regard to the important role of domestic violence restraining orders and of the necessity of courts promoting respect for their own orders, a sentence of imprisonment may be appropriate in those cases, like the present, in which the order has been repeatedly breached and the offender has not taken advantage of the lenience previously extended to him. In cases of contumacious breaches of order, considerations of both general and personal deterrence are especially important*’

(see at [32]).

2. The Court agreed with the appellant's submission that the sentence should have been partially suspended. The appellant had complied with the order for a long period since 2003 and the latest offence did appear to be isolated. Furthermore, it was at the lower end of the scale of seriousness for offences of that type. The offence was also explained by the fact that the appellant was coming off anti-depressants' and was intoxicated (see further at [41]-[45]).