Hellings v The Queen **[2003] WASCA 208 (3 September 2003) – Supreme Court of Western Australia (Court of Appeal)**

'Aggravated stalking' – 'Following, harassing, monitoring' – 'Parole' – 'Physical violence and harm' – 'Propensity evidence' – 'Temporary protection order' – 'Threat with intent' – 'Totality' – 'Violence restraining order'

Charge/s: Aggravated stalking (x 2), threat with intent to prevent the complainant doing an act she was lawfully entitled to do.

Appeal type: Appeals against conviction and sentence.

Facts: While in a relationship with the male applicant, the female complainant were in a relationship obtained two restraining orders. The relationship ended and she obtained another violence restraining order. The applicant was charged with two counts of aggravated stalking. Further, he was charged with making a threat with intent to prevent the complainant doing an act she was lawfully entitled to do because of a 10-page letter he sent to the complainant. This was 'abusive in the extreme' and threatened violence against the complainant if she participated in the court action. The applicant was acquitted of the indictable offence for the first aggravated stalking charge and convicted of the alternative simple offence. He was found guilty in two other trials for the second indictable aggravated stalking offence and for the threatening letter. The complainant gave evidence of the relationship between her and the applicant. On occasions, her answers were unresponsive to questions and rambling but neither counsel made any effort to prevent the complainant answering questions in that way. The applicant was sentenced respectively to 6 and a half years' imprisonment and 5 years' imprisonment, cumulative. The applicant sought leave to appeal against these latter two convictions and sentences.

Issue/s: Some of the issues included –

1. A miscarriage of justice arose because evidence of the relationship should have been deemed inadmissible or should have been excluded on discretionary grounds in both the stalking and threatening letter trials.
2. In the stalking trial, the trial judge erred by failing to give adequate directions to the jury as the relevance of the 'context' or 'relationship' evidence and to the extent they could use it in their deliberations.
3. The trial judge erred in not making a parole eligibility order.
4. The sentences were manifestly excessive in all circumstances concerning their commission and, when accumulated, the total term of 11 and a half years' imprisonment is disproportionate to the total offending behaviour.

Decision and Reasoning: The appeals against conviction and sentence were dismissed. First, while some of the complainant's evidence in both the stalking and threatening letter trials was inadmissible or might have been objected to on discretionary grounds, there was no resulting miscarriage of justice (See [34]-[36] and [60]-[63]). The evidence that was inadmissible or might have been excluded was insignificant having regard to the evidence that was admissible relating to relevant aspects of violence and harassment in the relationship (See [34]-[36]).

Second, a direction to the jury regarding the use of the complainant's relationship evidence as 'propensity evidence' was not necessary here. *'Such a direction will be very necessary in cases where there is a danger that the jury might reason that because an accused person has conducted himself in a particular way in the past towards his victim he might be found to have done so again at the time alleged by the indictment'* (See [39]). This was not the case here as there was no real dispute that the applicant breached the violence restraining order or that his actions fell within the meaning of pursuit (See [37]-[39]).

Third, the discretion not to order parole eligibility did not miscarry in this case. The applicant remained beset by a deep-seated psychological disorder. His aggression was unchecked and his past behaviour showed that if parole eligibility was ordered he would be likely to reoffend (See [85]-[87]).

Finally, the sentences were not manifestly excessive. The stalking offence was of a very serious kind. The offending occurred when the applicant was already charged with an offence of aggravated stalking, he failed to appear on the date for trial, and was eluding authorities. The nature of the stalking itself was serious and persistent with 160 calls over a 22-day period and overt threats being made (See [92]-[97]). Further, in relation to the threatening letter offending, the threats were credible, and 'serious and graphic'. The purpose of the threat, to prevent a person engaging in lawful activities, significantly aggravated the offending (See [98]-[99]). In terms of totality, the total sentence was not disproportionate to the offending given the persistent nature of the applicant's conduct, the period of time over which it took place and the serious nature of the offending (See [101]).

Note: the High Court refused special leave to appeal (see *Hellings v The Queen* [2005] HCATrans 255 (27 April 2005)).