

***Hamlett v Whitney* [2013] WASC 100 (22 March 2013) – Supreme Court of Western Australia**

‘Aggravated assault’ – ‘Bail’ – ‘Emotional and psychological abuse’ – ‘Physical violence and harm’ – ‘Temporary protection order’ – ‘Totality’

Charge/s: Breach of bail (x 2), breach of protective conditions.

Appeal type: Appeal against sentence.

Facts: The appellant was on bail for a charge of common assault in circumstances of aggravation namely, that the appellant was in a domestic relationship with the female complainant. The appellant’s bail was subject to a number of conditions including that he was not to contact or attempt to contact the complainant, he was not to approach within 20 metres of an address at which the complainant was living, and he was not to behave in a provocative or offensive manner to residents at that house. The applicant was subsequently charged with breach of protective bail conditions when he verbally abused and threatened the complainant at Centrelink offices. He was further charged with a number of offences of stealing and aggravated burglary and failed to appear in Court after being released on bail. He was charged with two breach of bail offences.

The appellant pleaded guilty to the breach of protective bail conditions and the two other charges of breach of bail. In sentencing, the magistrate noted: *‘Protective bail is placed on people for a purpose and that is to protect the victim, the person who is protected by the protective bail; and people who breach protective bail, like people who breach restraining orders, in a manner that you did, that is, actually threatening the protected persons, in my view ought be sentenced to a term of imprisonment [...] These three offences, in my view, show a total disregard for court orders. There really is nothing that can be said by way of mitigation in relation to this offending. Ms Svanberg has pressed upon me that when you breached your protective bail you were intoxicated, but being intoxicated may explain why you breached your protective bail and why you breached your normal bail undertakings but it doesn't excuse your behaviour. The fact of the matter is you were on protective bail for a reason and you breached it’* (See [17]). The appellant was sentenced to a total effective sentence of 6 months and 1 day.

Issue/s: The appellant did not suggest that the 4-month sentence for the breach of protective bail conditions was excessive. The sentences of imprisonment for the other two offences were manifestly excessive. Further, the total effective sentence was disproportionate to the total criminality and therefore offends the totality principle.

Decision and Reasoning: The appeal was refused. In light of the maximum penalties available, the seriousness of the offences, and the personal circumstances of the appellant the sentence imposed was not manifestly excessive. The total effective sentence was also not disproportionate to the total offending (See [35]).