***Sakkers v Thornton* [2009] WASC 175 (22 June 2009) – Supreme Court of Western Australia**

'Aggravated stalking' – 'Breach of restraining order' – 'Concurrency' – 'Deterrence' – 'Double jeopardy and other charges' – 'Double punishment' – 'Following, harassing, monitoring' – 'Possession of firearm' – 'Suspended sentence' – 'Totality'

Charge/s: Aggravated stalking (circumstance of aggravation – that the offence was committed in breach of a violence restraining order), breach of violence restraining order (12 counts), possession of firearm with circumstances of aggravation.

Appeal Type: Appeal against sentence.

Facts: The appellant was in a relationship with the complainant for three years which ended. The appellant then continually sent emails and text messages to the complainant (including at her workplace) and made threats to kill her. The complainant obtained a violence restraining order (VRO) which prevented the appellant from communicating with her by any means. His conduct then continued in breach of the order. He was arrested and Police found a firearm and ammunition at his home. The appellant was sentenced to 12 months' imprisonment for the stalking charge, a global sentence of 12 months' imprisonment for the breach offences (cumulative on the sentence for stalking) and 7 months and 2 weeks' imprisonment for the possession of firearm offence.

Issue/s: Some of the issues concerned -

1. Concurrency: Whether the sentence imposed for the breach offences should have been made concurrent with the sentence for the stalking offence because both offences involved the same acts.
2. Totality: Whether the Magistrate failed to have proper regard to the totality principle.
3. Whether the sentences were manifestly excessive.
4. Whether the sentence should have been suspended.

Decision and Reasoning: The appeal was upheld in respect of issue 1.

1. The prosecution conceded that the appeal on the issue of concurrency must succeed. Section 11(1) of the *Sentencing Act 1995* provides that a person is not to be sentenced twice on the same evidence. Simmonds J stated at [22] – *'Here the offence of aggravated stalking was constituted by the course of conduct whose constituents were the 12 breaches of the violence restraining order. The sentences for the 12 breaches of violence restraining order, globally, are the same as the sentence for the aggravated stalking.'* As such, the global sentence for the breach offences was set aside.
2. The appellant submitted that a total effective sentence (without the sentence for the breach offences) of 19 months and 2 weeks was a crushing sentence and was not a just measure of the criminality involved.

Simmonds J acknowledged that the Magistrate failed to recognise an overlap in the criminality between the stalking and breach offences, in that he did not have regard to the issue of double punishment, as noted above. However, this did not result in the sentence infringing the totality principle.

3. An argument that the sentences for the aggravated stalking and firearms offences were manifestly excessive was dismissed. The appellant had some modest criminal history which did not involve violence. While he pleaded guilty, he showed minimal insight into his actions or empathy towards the victim. Simmonds J also noted the seriousness of the offending. In comparing analogous cases (see [70]-[72] for summaries) his Honour concluded that the sentence was within range.
4. The Magistrate did not suspend the sentence because he was concerned that a suspended sentence would act as a sufficient deterrent to the appellant and would not provide adequate protection for the victim, as well as other matters. This approach was appropriate and this ground was dismissed.