

Rowe v Gaunt [2013] WASC 90 (20 March 2013) – Supreme Court of Western Australia

‘Breach of restraining order’ – ‘Expiration of restraining order’ – ‘Miscarriage of justice’

Charge/s: Breach of restraining order.

Appeal Type: Appeal against conviction.

Facts: An interim violence restraining order was granted which prohibited the appellant from approaching within 5m of any premises where the protected person lived or worked. This order was later made final. The appellant was charged with breaching the order by going to the house of the protected person and placing a letter in the letterbox. She pleaded guilty and was convicted. However, the police later became aware that the order had expired when the offence occurred.

Issue/s: Whether the conviction should be set aside.

Decision and Reasoning: The appeal was upheld. The Court set aside the conviction because the conviction amounted to a miscarriage of justice. Hall J noted the following at [13] –

‘I am compelled to note that this is the second occasion in recent times on which I have been called upon to set aside a conviction for breach of a violence restraining order where the alleged breach has occurred after the order has expired. See Topic v Lynch [2012] WASC 446. It is of course a necessary element of an offence under s 61 of the Act that there be a restraining order in force at the time the breach is alleged to have occurred. It is always possible that a protected person may complain to the police on the basis of a mistaken belief that a restraining order is still in force. Care must be taken to ensure that that is the case.’