

Romero v DPP [2017] NSWSC 1190 (17 July 2017) – New South Wales Supreme Court

‘Error of law’ – ‘Judicial review’ – ‘Orders’ – ‘Post-separation violence’ – ‘Procedure’ – ‘Remitted to local court’

Charges: Common assault x 1.

Appeal type: Appeal against conviction.

Facts: The appellant was convicted of common assault against his former partner ([1]). The police applied for an apprehended domestic violence order ([3]). The Magistrate conducted the summary trial on the basis that the Magistrates Court had jurisdiction to hear the criminal proceedings and civil proceedings for apprehended violence orders concurrently, which was incorrect ([5], [15]).

Issues: Orders to be made.

Decision and Reasoning: The DPP conceded that the Magistrate erred in law, so the only contentious point was in relation to the orders to be made. First, McCallum J ordered the DPP to pay half of the plaintiff’s costs, since the plaintiff had been denied a hearing according to law ([22]). Second, the parties sought an order remitting the matter to a ‘differently constituted Local Court’ ([23]). Judge McCallum considered that there was no need for an order to a ‘differently constituted’ Court in the absence of apprehended bias or prejudgement ([24]). Judge McCallum remitted the matter of the assault charge to the Local Court to be heard and determined according to law.