

***Peel v Police* [2020] SASC 48 (7 April 2020) – South Australian Supreme Court**

‘Breach of suspended sentence’ – ‘Exceptional circumstances’ – ‘Protection order’

Offences: Contravening a term of an intervention order x2; aggravated assault x1; failing to comply with a bail agreement x1; and driving under disqualification or suspension x 1

Type of Appeal: Appeal against sentence following breach of suspended sentence of imprisonment

Ground: The Sentencing Magistrate erred in the exercise of his discretion pursuant to s 114(3) of the Sentencing Act 2017 in that:

the learned Magistrate did not give adequate or appropriate consideration to the terms of the section and the meaning of "proper grounds" therein; and

gave undue weight to considerations personal to the Appellant including his criminal history, as opposed to the circumstances of the breach itself, such that the sentencing process miscarried.

Facts: The appellant man was convicted of two counts of contravening a term of an intervention order, aggravated assault, failing to comply with a bail agreement and driving under disqualification or suspension on 2 September 2019. He was sentenced to four months and 15 days imprisonment to be suspended after one month upon entering into a 15 months good behaviour bond. With backdating the bond was entered into on 13 September 2019. Since 17 October 2016 the appellant had been the subject of an intervention order for three years. Condition 3 of the order read "the defendant must not be within 100 metres of the protected persons". The appellant breached this order by being found with the protected person (his female former partner) in the front yard of his family member on 23 October 2019. He was visiting family and while he was at their home the protected person attended. He did not know she would be there and nothing untoward happened between them. It was a chance encounter and by not leaving immediately, the appellant was found to have breached a good behaviour bond and convicted of contravening a term of the intervention order. The Magistrate sentencing him to three weeks imprisonment and at the same time revoked the suspended sentence bond and ordering that the appellant serve the remaining time in imprisonment [3]. An application was made before the sentencing Magistrate providing that the Magistrate "should find that there were proper grounds to say that the failure to comply with the conditions of the suspended sentence bond should be excused and that no further action should be taken in respect to that failure" [4].

Judgment: The appeal was allowed and the suspended sentence of three months and 15 days was revoked. David AJ stated that "[t]he question whether there are proper grounds for excusing the breach is to be confined to the nature of the breach itself without any consideration of matters personal to the offender. That principle has been clearly stated in [Heritage](#)" [15]. The sentencing Magistrate was found to have gone beyond this principle and was instead influenced by the previous offending [15]. In considering this, the sentencing Magistrate was found to have erred.