

***Wondimu v Police* [2019] SASC 62 (18 April 2019) – South Australia Supreme Court**

‘Bail’ – ‘Bail conditions’ – ‘Breach’ – ‘Following, harassing and monitoring’ – ‘Self-represented’

Charges: Stalking x 1; non-compliance with bail agreement x 3.

Case type: Appeal against conviction and sentence.

Facts: On 2 November 2016, the appellant was arrested and charged with stalking his father-in-law. He was released on bail subject to conditions, one of which prohibited him contacting his then wife of 13 years, who was also the mother of his five children and the daughter of his father-in-law. On 10 November 2016, the appellant telephoned his wife, but did not leave a message. The appellant also sent 2 text messages on a separate occasion. As a result, he was arrested and charged with 3 counts of breaching the terms of his bail. The Magistrate found the appellant guilty, and imposed convictions in relation to each count and released him upon his entering into a 6 months’ good behaviour bond in the sum of \$500. The appellant appealed against the conviction and sentence. His appeal against conviction was over 40 weeks out of time.

Issue: This is an appeal against a conviction and sentence, where the appeal against conviction was made out of time. The appellant submitted that the relevant bail condition was unreasonable or unlawful for including the prohibition against contact with his wife when she was not the complainant. He also argued that he had not been competently represented by counsel at his trial.

Held: Upon the hearing of the appeal, the appellant was unrepresented. Hinton J noted that one of the purposes of conditions of a bail agreement is to prevent further offending ([33]). Hinton J was not satisfied that the impugned condition was legally unreasonable, as the evidence suggested a domestic disturbance between the appellant and his wife, a repeat of which the police intended to prevent by prohibiting contact. Further, Hinton J found that the validity of a bail agreement does not depend on the prosecution’s success at trial of any charge to which the bail agreement relates. The fact that a person is charged is sufficient to subject him or her to bail ([36]).

Hinton J also found that it was open to the Magistrate to be satisfied of the appellant's guilt on Count 1 beyond reasonable doubt ([44]). His Honour noted that contact, in terms of communication, can be direct or indirect and that the evidence established that the call was made from the appellant's phone. His Honour found that it is irrelevant whether a mental element attaches to the act, as the offence of breaching a bail agreement pursuant to section 17 of the *Bail Act 1985 (SA)* is one of strict liability. A bail agreement, in his view, not only seeks to ensure compliance but also requires the accused to take positive steps to ensure compliance. To hold that an offence is one that has a mental element attaching to the act would undermine the requirement that an accused granted bail take positive steps to avoid an inadvertent breach ([43]).

His Honour refused to grant the appellant an extension of time in which to appeal against his convictions, as no explanation was provided for the delay and the appeal did not have sufficient prospects of success. His Honour held that the the appeal was, in effect, an effort to have the appellant's case re-tried so that he could adopt a different approach ([45]). The appeal against sentence was also dismissed. The appellant was obliged to take steps to ensure compliance with the bail conditions, which he failed to do ([46]-[51]).