

Re application for bail by Roberts [2018] VSC 554 (21 September 2018) – Victorian Supreme Court

‘Bail’ – ‘Children’ – ‘Factors affecting risk’ – ‘Physical violence and harm’ – ‘Protection order’ – ‘Sexual and reproductive abuse’ – ‘Unacceptable risk and best interests’

Charges: Charges include rape, unlawful assault, contravention a Family Violence Intervention Order, persistent contravention of a Family Violence Intervention Order, attempt to commit an indictable offence, property damage and use a carriage service for child pornography material

Proceeding type: Application for bail

Facts: The complainant was the former partner of the applicant. They have three children. The applicant was charged with 64 offences including rape, unlawful assault, contravention a Family Violence Intervention Order, persistent contravention of a Family Violence Intervention Order, attempt to commit an indictable offence, property damage and use a carriage service for child pornography material.

Issues: Whether bail should be ordered; Whether the applicant discharged his onus of showing compelling reasons why his continued detention is not justified.

Decision and reasoning: The applicant’s application for bail was refused as he failed to show compelling reasons why his continued detention was not justified. Taylor J noted that if he had been satisfied that a compelling reason existed justifying the grant of bail, he must apply the unacceptable risk test. In considering [s 5AAA\(2\)\(a\)](#) of the *Bail Act 1977* (Vic), Taylor J considered that there was a risk that, if released on bail, the applicant would commit family violence. His blatant disregard of the court orders and the effect of his behaviour on the complainant, was exemplified by the 1200 text messages he had sent to the complainant between September 2017 and March 2018. His preparedness on two occasions to continue a sexual offence notwithstanding his knowledge that his actions were being audio-recorded further indicated a complete indifference to the complainant, as well as a sense of entitlement ([57]). His prior convictions for matters of family violence demonstrated continuous disregard for the authority of the court and the complainant’s safety and wellbeing. If released on bail, the risk of family violence would not be able to be sufficiently mitigated by the imposition of a bail condition requiring compliance with existing FVIOs ([59]).