

***Salkild v State of Western Australia* [2017] WASCA 168 (15 September 2017) – Western Australia Supreme Court (Court of Appeal)**

‘Breach of protection order’ – ‘Breach of violence restraining order’ – ‘Emotional and psychological abuse’ – ‘Following, harassing and monitoring’ – ‘Remorse’

Charges: Making a threat unlawfully to kill x 1; Stealing x 1; Breach of protective bail conditions x 7; Breach of bail x 1; Breach of violence restraining order (VRO) x 8; Possession of property reasonably suspected to be stolen x 1; Fraud x 1; Breach of police order x 1.

Appeal type: Appeal against sentence.

Facts: The appellant and respondent were in a relationship for about 3 weeks ([4]). The appellant had come home to find the complainant having sex with another man, which sparked a confrontation. The police issued the appellant with a police order preventing the appellant from approaching the property and complainant ([5]). The appellant returned to the property the same day and tried to force his way in ([6]). The complainant obtained a violence restraining order (VRO) against the appellant ([7]). Over a period of two days, the appellant called the complainant many times and sent text messages of a frightening nature, including threats to kill her ([15]-[19]). This conduct constituted a breach of the VRO subject of the appeal. The following day, the complainant repeatedly rode his motorcycle past the house while the complainant was inside ([21]). This conduct constituted a breach of the protective bail conditions subject of the appeal.

The sentencing judge imposed a head sentence of 2 years’ imprisonment ([45]).

Issues: There were 4 grounds of appeal:

1. the sentence of 9 months’ imprisonment for the breach of VRO was manifestly excessive;
2. the sentence of 6 months’ imprisonment for the breach of protective bail conditions was manifestly excessive;
3. the head sentence infringed the principle of totality; and
4. the judge erred in finding that the appellant was not remorseful

Decision and Reasoning: All four grounds were dismissed for the following reasons.

For ground 4, the appellant bore the burden of proof in establishing remorse on the balance of probabilities ([58]). While the appellant had expressed some level of responsibility for his actions, he displayed minimal victim empathy ([59]). It was open to the sentencing judge to find that the appellant demonstrated no remorse for the impact of his offending on the victim ([57]).

For ground 1, the breach was a sustained course of conduct and the messages were intended to terrify the complainant ([63]).

For ground 2, the breach was not an isolated breach and was intended to intimidate the complainant ([72]).

For ground 3, the sentence was well within the acceptable range ([87]).