

***Gilmour v The State of Western Australia* [2008] WASCA 42 (28 February 2008) – Western Australia Supreme Court (Court of Appeal)**

‘Aggravated stalking’ – ‘Attempt to pervert the course of justice’ – ‘Following, harassing, monitoring’ – ‘Systems abuse’ – ‘Temporary protection order’

Charge/s: Aggravated stalking, attempting to pervert the course of justice.

Appeal type: Appeal against sentence.

Facts: After the marriage between the male appellant and female complainant ended, the complainant noticed the appellant following her around. Several items went missing from her home. The appellant then damaged the property of a complainant’s male friend resulting in the imposition of a violence restraining order (VRO). The appellant subsequently breached this VRO. An altercation between the appellant and complainant led to the appellant being charged with assault and damage to property. He was acquitted on the assault charge. The appellant continued to follow the complainant around, telephoned her and would not speak, and made noises around her property at night. The complainant obtained a VRO.

Notwithstanding this, the appellant changed a white light bulb at the complainant’s home to a red bulb. Cameras she installed at her property also detected the appellant wearing a gorilla mask and holding a knife in his hand. The appellant also attempted to pervert the course of justice in relation to this incident by requesting his neighbours provide him with an alibi. He received a term of 4 years’ imprisonment in respect of the aggravated stalking and 10 months in respect of the attempt to pervert the course of justice, to be served cumulatively. That produced a total effective sentence of 4 years 10 months’ imprisonment.

Issue/s:

1. The sentence in respect of the aggravated stalking offence was manifestly excessive, particularly in view of the appellant’s antecedents.
2. The sentencing judge erred in imposing cumulative sentences.

Decision and Reasoning: The appeal was dismissed. The sentence was not manifestly excessive. The personal circumstances favourable to the appellant (being only the absence of a prior record) could have limited weight in the circumstances, having the regard to the absence of remorse and a clear need for personal and general deterrence. This was determined and persistent pursuit of the complainant, in circumstances where she had obtained a restraining order and where he had been charged with offences arising out of his conduct towards her (See [12]-[13], [16]). Wheeler JA further held that the sentencing judge did not err in making the sentence of attempting to pervert the course of justice cumulative. This was more serious offending than the giving of a false name to police or entering a false recognisance. It was an attempt to pervert the course of justice in relation to an offence of a relatively serious nature and involved the use of innocent and unconnected third parties to engage in criminal conduct (See [17]-[19]). See *Gilmour v State of Western Australia* [2005] WASC 243 (8 November 2005).