***Rogers v Hitchcock* [2015] WASC 120 (7 April 2015) – Western Australia Supreme Court**

'Breach of police order' – 'Criminal history' – 'Exposing a child' – 'Following, harassing, monitoring' – 'Programs for perpetrators' – 'Sentencing'

Charge/s: Breach of police order.

Appeal Type: Appeal against sentence.

Facts: The appellant was at a caravan park with his wife and two-year-old child. The appellant and his wife were drinking heavily when a disagreement occurred and police attended. Police issued a 72-hour order under the *Restraining Orders Act 1997* (WA) which prevented the appellant from communicating with his wife or approaching within 100 metres of her. The next day, police attended to check on the appellant's wife and discovered the appellant hiding in the house. The appellant had a minor but relevant criminal history involving two breaches of prior police orders made in favour of his wife. He pleaded guilty, was granted bail and was placed on a 'domestic violence behaviour change programme' under the supervision of a Family Violence Court. He completed the majority of the program but was unable to complete it because he was remanded in custody after attending his wife's home in breach of bail. A progress report about his participation in the program was provided to the Magistrate, which stated that he generally 'reported as directed and engaged well' but that he 'had made no identifiable treatment gains during the programme and was not considered suitable for a further community based disposition' (see at [16]). He was sentenced to seven months' imprisonment.

Issue/s: Some of the issues concerned –

1. Whether the Magistrate erred in sentencing the appellant to a term of imprisonment.
2. Whether the Magistrate erred in failing to suspend the term.
3. Whether the Magistrate erred in failing to backdate the sentence of imprisonment.

Decision and Reasoning: The appeal was upheld in respect of ground 3 – the Magistrate erred by not backdating the sentence to give credit for time already spent in custody.

1. The issue of imprisonment was decided in the context of s 61A of the *Restraining Orders Act 1997* (WA), which provides for a presumption of imprisonment for repeat offenders under the Act. Hall J held that while there was no actual or threatened violence involved in the current or prior breaches, the appellant had deliberately refused the authority of the orders. See in particular at [46] – '*Deliberate breaches of court orders or police orders made under the Act undermine the efficacy of such orders. Deterrence both personal and general must play a significant role when orders are breached. If those who are the subject of such orders believe that they can breach them without suffering any real consequence then there will be little incentive to be compliant.'*

2. The Court held that it was within the Magistrate's discretion to refuse to suspend the sentence.

   Given error was demonstrated by the failure to backdate the sentence, it was appropriate to resentence the appellant. In that regard, Justice Hall took into account some further steps that the appellant had taken towards rehabilitation, including drug and alcohol programs. Given these circumstances and the time already spent in custody, the prison sentence was set aside and the appellant was fined $1500.