***Wallam v Grosveld* [2015] WASC 145 (24 April 2015) – Western Australia Supreme Court**

'Breach of restraining order' – 'Imprisonment' – 'People affected by substance abuse' – 'Sentencing'

Charge/s: Breach of restraining order.

Appeal Type: Application for leave to appeal against sentence.

Facts: The applicant was subject to a violence restraining order (VRO) in favour of his former partner which prevented him from approaching her and from being within a nominated distance of her premises. He attended her premises in breach of the order. He claimed that he and the protected person were 'back in a relationship'. His had a history of breaching restraining orders in place against the same protected person. He was sentenced to 8 months' imprisonment.

Issue/s: Some of the issues concerned –

1. Whether it was reasonably open for the Magistrate to conclude that a sentence of immediate imprisonment was the only appropriate sentencing option.
2. Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was upheld. It seemed that the protected person invited the applicant back to her premises to collect his clothes. Notwithstanding, any breach of a VRO is serious. Justice Kenneth Martin commented on the penalties for the offence and then noted at [78]:

'Those significant statutory penalties speak loudly as to the seriousness of a breach of a restraining order and dictate how closely and carefully the underlying circumstances of such an offence must be assessed in every case. In the past there have, of course, been well referenced instances where terrible crimes of violence have been committed in the community against protected persons by individuals otherwise bound by a restraining order, but who chose to ignore it. Plainly, the statutory right to apply for a VRO is meant to assist the more vulnerable to protect themselves from violence, especially (but not solely) women who are the victims of domestic violence. Thus, issues of general and specific deterrence concerning offenders are more than usually important in this arena.'

In this case, there had been no threatening or intimidatory behaviour. While an adverse inference could be drawn from the apparent fact that the applicant was hiding when police arrived, the applicant's actions cannot be seen as a 'calculated and flagrant' contempt of the VRO – *'Ignorance about the strict workings of a VRO, in the face of periods of separation and reconciliation and then heavy alcohol consumption at the end of a long-term relationship, are a more viable explanation for his misconduct, in my view'* (see at [80]).

His Honour expressly stated that he was not meaning to convey that for some VRO breaches which include a 'flagrant disregard' for court orders, 'a term of immediate imprisonment will not present as the only appropriate sentencing option' (see at [81]). However, in this case the circumstances (including that the penalties imposed upon him for his prior breaches were only fines and the benign nature of the breach) meant that an escalation in punishment from these pecuniary penalties up to a term of 8 months' imprisonment, was not within the discretion open to the Magistrate. (Note: this position would be altered if s 61A of the *Restraining Orders Act 1997* (WA) applied, which provides for a requirement of imprisonment after 2 discrete offences within a 2-year period).

2. This argument was also upheld.