

***Goodacre v Lumbers* [2019] WASC 184 (27 May 2019) – Western Australia Supreme Court**

‘Appeal against conviction - guilty plea’ – ‘Breach of fvro’ – ‘Meaning of fvro term’

Charge/s: 1 x breach of FVRO

Case Type: Application for extension of time to appeal, appeal against conviction following plea of guilty

Facts: On 29 December 2018 the appellant was convicted in the Magistrates Court on his plea of guilty to one offence of breaching a FVRO contrary to s 61(1) of the Restraining Orders Act 1997 (WA). The appellant applied for an extension of time to appeal and for leave to appeal against conviction. The appellant appeals the conviction on the ground that he could not in law, on the basis of the admitted facts, have been guilty of the offence. The appellant was said to have breached the FVRO by ‘harass[ing] the Person Protected by any electronic means, including by using the internet and any social network application (such as ‘Facebook’) to depict or refer in any manner to the person protected’, and appeals on the basis that he was dealt with in the Magistrates Court on the basis that he referred to the person protected and not on the basis he harassed her.

Issue: Is a reference to a protected person in a SMS message not sent to the protected person a breach of the FVRO? Is it a mere reference via electronic means that constitutes a breach, or is it actual harassment?

Held: Application allowed and leave granted. A breach occurs if the person subject to the order ‘harasses’ the person protected. The reference to ‘including by using the internet and any social network application (such as ‘Facebook’) to depict or refer in any manner to the person protected’ serves only as an example of what could constitute harassment, and was not intended by parliament to mean that any electronic reference to the person protected constitutes a breach.

[Summary prepared by Lily Philp for Western Australian Magistrates Court]