

***Stockley v Bailey* [2020] WASC 193 (8 June 2020) – Western Australia Supreme Court**

‘Aggravated home burglary’ – ‘Application for leave to appeal against sentence’ – ‘Breaches of protection order’ – ‘Controlling, jealous, obsessive behaviour’ – ‘Following, harassing and monitoring’ – ‘Guilty pleas’ – ‘History of domestic violence’ – ‘Separation’ – ‘Stalking’ – ‘Weapon’

Charges: Breaching a family violence restraining order x 6; possessing a controlled weapon x 1; aggravated home burglary x 1; deprivation of liberty x 1

Case type: Appeal against sentence

Facts: In February 2020, the applicant man was sentenced to 7 months’ imprisonment following his conviction after guilty pleas to 6 offences of breaching a family violence restraining order (FVRO) and one offence of possessing a controlled weapon. Three days earlier the applicant was sentenced, following a guilty plea, to 3 years’ imprisonment in relation to a charge of aggravated home burglary and deprivation of liberty. These offences occurred at the same time as one of the FVRO offences and the possession of the controlled weapon, and the day before another two of the FVRO offences.

The applicant man and female victim were in a relationship which ended around April 2019. On 26 May 2019, the applicant was served with the FVRO which prohibited him from, among other things, communicating or attempting to communicate with the victim. Approximately 2 hours after being served, the applicant sent a series of 88 text messages to the victim. He was arrested, charged with breaches of the FVRO and released on bail. Several days later the applicant entered the victim’s house, pointed a replica pistol at her, forced her into his car and handcuffed her. That night, the pair discussed their relationship and had consensual sex. The applicant continued calling the victim and told her that he had entered her house again and accessed her Facebook account. He also repeatedly approached the victim on her commute home, including getting into her vehicle with her. The applicant was eventually arrested near the victim’s home, and police searched his premises and located the replica firearm. The applicant had a modest criminal record, including convictions for breaching restraining orders and assault.

Grounds:

7 months’ imprisonment was manifestly excessive; and

the total sentence of 3 years, 7 months was disproportionate to the overall criminality involved and the total sentence was crushing.

It was also argued that the learned magistrate failed to give sufficient weight to his early guilty pleas, his lack of a relevant record and reasonably good antecedents, his efforts at rehabilitation, and his mental health at the time of his offending, which had been treated at the time of sentencing.

Held: Leave to appeal granted, appeal dismissed.

Ground 1 was not established. The applicant's breaches of the FVRO were not minor or technical. Rather, he repeatedly refused to obey the order which was imposed for the victim's protection, and flagrantly disregarded both the authority of the court and the rights of the victim ([56]). The offences were serious as they involved the applicant entering the victim's home on two separate occasions (one of which involved a replica pistol and handcuffs), and following her on the train home. These breaches were terrifying for the victim who believed that she was going to be murdered. The offences were further aggravated by the fact they were committed when the applicant was on bail for earlier breaches of the FVRO ([57]). However, Hill J noted that the Magistrate did not comply with s 9AA(5) Sentencing Act by failing to state the extent of the reduction given for his guilty plea ([70], [85]), but this did not result in the applicant's sentences being overturned ([71]). Hill J also found that the Magistrate took the applicant's antecedents and mental health issues into account. It was clear that the Magistrate considered that the applicant's mental health issues were not such that he was an unsuitable vehicle for personal and general deterrence ([74]-[75]).

In relation to Ground 2, Hill J found that the total effective sentence was neither unreasonable nor plainly unjust, and was not crushing ([82]-[84]). Any error made by the Magistrate did not result in a substantial miscarriage of justice ([91]).