***Howell v Davies* [2019] WASC 220 (12 June 2019) – Western Australia Supreme Court**

'Breach of protection order' – 'Safety and protection of victims' – 'Sentencing' – 'Suspended sentence'

Charges: Breach of family violence restraining order x 1.

Appeal type: Appeal against sentence.

Facts: The appellant was the subject of an interim restraining order requiring the appellant not to communicate with the protected person and not to approach within 50 metres of her ([5]). The appellant did not appear at the Magistrates Court for a hearing in relation to the restraining order ([7]). After the hearing, the appellant approached the protected person outside the courthouse ([8]).

The appellant was sentenced to 7 months' imprisonment. The Magistrate discussed the necessary test for imposing a suspended sentence compared to a sentence of imprisonment.

Issues: Whether the magistrate erred in law in finding that it would be necessary to find 'unjust circumstances' in order to suspend the term of imprisonment.

Decision and reasoning: Hall J found that the magistrate did make the error alleged ([28]):

> "the plain meaning of the phrase used by the magistrate is that unless he found it was unjust to do so he could not suspend the sentence of imprisonment. That was to impose a higher bar than had to be met. Indeed, the law required that he not impose immediate imprisonment unless he was positively satisfied that it was not appropriate to suspend the term."

However, his Honour found that a substantial miscarriage of justice did not occur as the sentence was appropriate. Relevant factors included that the appellant had been convicted of multiple breaches of restraining orders in the past five years, that the appellant was on conditional release from prison (after serving a two-month sentence for the previous breaches of the same restraining order), the approach was physical, and it occurred in the vicinity of the courthouse, where the protected person was entitled to feel safe ([32]-[38]).