

***Corrigan v Kirkman* [2011] WASC 254 (11 July 2011) – Western Australia Supreme Court**

‘Aggravated common assault’ – ‘Breach of protective bail conditions’ – ‘Breach of violence restraining order’ – ‘Physical violence and harm’ – ‘Temporary protection order’ – ‘Totality’

Charge/s: Aggravated common assault, breaches of violence restraining orders, breaches of protective bail conditions.

Appeal type: Appeal against sentence.

Facts: The offences related to a female complainant, with whom the appellant had been in a domestic relationship with. The appellant committed 29 breaches of a violence restraining order which prohibited the appellant, amongst other things, from communicating with the complainant. He did so by communicating with her by mobile phone (the ‘VRO offences’). He also committed four offences of breach of protective bail conditions by being 50-100 metres of the complainant on three occasions and by sending her a text message on one occasion (the ‘bail offences’). Finally, the applicant committed one offence of common assault in circumstances of aggravation at the same time as one of the bail offences. The magistrate sentenced the appellant to a total effective term of 12 months’ imprisonment, made up as follows: on aggravated assault 8 months’ imprisonment, one of the bail offences 4 months’ imprisonment (concurrent), 2 of the bail offences 4 months’ imprisonment (cumulative), one of the bail offences 2 months’ imprisonment (concurrent), and VRO offences 6 months’ imprisonment concurrent.

Issue/s: One of the issues was whether the total sentence was contrary to the first limb of the totality principle.

Decision and Reasoning: The appeal was allowed. The total effective sentence in this case was disproportionate to the overall criminality of the offending behaviour. The aggravating circumstances in respect of the assault offence, i.e. the breaches of the VRO and protective bail conditions, called for concurrency between the sentence on that offence and all other sentences. There should have been partial concurrency or a reduction in the length of sentence to avoid multiple punishment for these acts (See [97]-[99]).