

***Taylor v The State of Western Australia* [2014] WASC 292 (19 August 2014) – Western Australia Supreme Court**

‘Assault causing bodily harm’ – ‘Bail’ – ‘Physical violence and harm’

Appeal type: Bail application.

Facts: On 4 October 2013, the applicant was charged with assaulting his former de facto partner. He was released on bail. The bail undertaking included a condition that he was not to contact or attempt to contact the victim by any means. While on bail, the applicant committed a further assault on the victim causing her bodily harm. He was arrested and charged with that assault and with failing to comply with a protective bail condition. Bail could not be granted again unless the applicant showed there were exceptional reasons he should not be kept in custody. The applicant’s criminal history showed that he had two prior convictions for breach of protective bail conditions in 2012 and 2013. The applicant was also alleged to have breached protective bail conditions on another occasion but this had not been the subject of prosecution.

Issue/s: Whether there were exceptional reasons why the applicant should not be kept in custody.

Decision and Reasoning: The application for bail was refused. There were not exceptional reasons why the applicant should not have been kept in custody. The applicant had breached protective bail conditions on multiple occasions in the past. While the victim had a conviction for assaulting the applicant, this did not justify the applicant’s failure to comply with protective bail conditions (See [29]-[30]). Although the prosecution case against the applicant could not be said to be overwhelming, it could not be said to be particularly weak. *‘A less than overwhelming case does not provide exceptional reasons to grant bail. If the prosecution case was particularly weak one or there was a high probability of acquittal the position might be different: Bertolami v The State of Western Australia [2009] WASC 269’* (See [32]). Based on the offending conduct, the judge could not accept the applicant’s argument that if he was convicted and imprisoned, the minimum term of any such sentence would be likely to be equal to or less than the time already spent in custody (See [33]). There was a risk that the applicant would commit further offences if released on bail, in particular by breaching any protective bail condition in regard to contacting the victim (See [34]).