

## ***Baudoeuf v Venning* [2010] WASC 322 (17 November 2010) – Western Australia Supreme Court**

‘Breach of violence restraining order’ – ‘Extenuating circumstances’ – ‘People with mental illness’ – ‘Sentencing’ – ‘Suspended sentence’

Charge/s: Breach of violence restraining order, breach of suspended imprisonment order.

Appeal Type: Appeal against sentence.

Facts: The appellant (aged 24) was the subject of a violence restraining order (VRO) in favour of the protected person (aged 52). They had been living together in an ‘off and on’ de facto relationship for about 18 months. The protected person had unsuccessfully applied to the Magistrates’ Court to have the order withdrawn. The breach occurred when the appellant had been living with the protected person for three days. An argument occurred, the police were called and the appellant was arrested. There was a history of violence in the relationship and the order had been breached four times in the past. According to a psychiatric report, the appellant presented with a ‘schizo-affective disorder, an ADHD history, personality disorders and mental retardation’ (see at [11]). Despite the orders being in place, it was the protected person who repeatedly invited the appellant back to live with her which constituted the repeated breaches. The breach of the VRO also constituted a breach of a suspended imprisonment order which had been imposed in relation to a prior breach in respect of the same protected person. He was sentenced to 7 months’ imprisonment for both offences, to be served concurrently.

Issue/s: Whether the Magistrate erred in imposing immediate sentences of imprisonment.

Decision and Reasoning: The appeal was upheld.

At trial, the Magistrate concluded that the psychiatric evidence did not support a conclusion that the appellant's mental illness or disturbance led to the commission of the offences. She concluded that the 'non-aggressive resumptions of cohabitation' (by the appellant) were 'part of a course of conduct over which the appellant could and should have exercised restraint and control in obedience to the VRO' (see at [42]). Em Heenan J held that this amounted to an error of fact and that his breaches could 'to a material degree' be explained by his history of mental illness (see at [44]). The appellant's mental health problems, in combination with significant personal stress related to his relationship with the victim 'impaired his ability to exercise appropriate judgment and his ability to appreciate the wrongfulness of his conduct, so contributing causally to the commission of the offence' (see at [48]). This reduction in culpability could lead to a reduction in the severity of the sentence and this was not sufficiently taken into account by the Magistrate. The appellant was re-sentenced as follows – no punishment was imposed in relation to the earlier breach. A conditional period of suspended imprisonment for 7 months (wholly suspended for 9 months) was imposed for the later breach.