

***Bindai v Armstrong* [2016] WASC 341 (20 October 2016) – Western Australia Supreme Court**

‘Miscarriage of justice’ – ‘Notice of application’ – ‘Violence restraining order’

Charges: Breach of violence restraining order (‘VRO’) x 1.

Appeal type: Appeal against conviction.

Facts: There was a final VRO in place protecting the applicant’s partner. The applicant’s partner applied for a variation of that order. The applicant was not served with notice of the application to vary the VRO ([10]). The Magistrate granted the application to vary the VRO even though the appellant was not present ([11]). The appellant pleaded guilty to breaching the VRO ([1]).

Issues: Whether the appellant’s conviction upon his own plea was a miscarriage of justice.

Decision and Reasoning: The appeal was allowed ([30]). The variation to the restraining order was a nullity ([16], [22]). It was an essential condition of the jurisdiction to hear the application to vary the VRO under s 48(2) of the *Restraining Orders Act 1997* (WA) that the Court be satisfied that the appellant was served with the summons ([23]). Since the Court was not so satisfied, the VRO had no legal force. It was a miscarriage of justice for the appellant to be convicted of breaching the order ([24]).