

***Smartt v Sloane* [2019] WASC 35 (5 February 2019) – Western Australia Supreme Court**

‘Coercive and controlling’ – ‘Cumulation’ – ‘Factors affecting risk’ – ‘Following, harassing and monitoring’ – ‘Protection orders’ – ‘Sentencing’

Charges: Breaches of a restraining order and a protective bail condition, stalking.

Appeal type: Appeal against sentence.

Facts: The appellant breached a Family Violence Restraining Order (FVRO) which restrained him from communicating or attempting to communicate with the victim (his former partner) by any electronic means. He was also charged with an offence of stalking, based on repeated calls he made to the victim which had the effect of intimidating her. He also failed to comply with a protective bail condition ([3]-[12]). He pleaded guilty to all the offences and was sentenced to 12 months’ imprisonment. The Magistrate noted that the appellant’s conduct was coercive and controlling, causing fear to his former partner. His behaviour was ‘persistent and intimidatory’, and the breaches showed a repeated disregard of the court orders ([16]).

Issues: The appellant sought to appeal his sentence on the ground that the Magistrate’s sentencing discretion miscarried, and that the sentence was manifestly excessive and contrary to the weight of the evidence.

Decision and reasoning: The Court found that the appellant’s breaches of the restraining order could not be described as ‘minor or technical’ ([33]). Although the breaches did not involve actual or threatened violence, his repeated acts showed a refusal to accept the authority of the order imposed for the protection of the victim. The Court was satisfied that the term imposed for the offences was manifestly long so as to show an error in principle ([35]). The Court considered the personal circumstances of the appellant – he was 36 years old, a self-employed businessman, and had previous convictions for serious breaches of a VRO against the same victim for which he was sentenced to imprisonment ([37]). Consequently, the Court allowed the appeal and resentenced the appellant. A cumulative sentence was found to be appropriate to reflect the additional element of intimidation. The head sentence was reduced to 8 months, and the appellant was eligible for parole ([40]-[41]).