Dickerson v The State of Western Australia **[2020] WASC 425 (18 November 2020) – Western Australia Supreme Court**

'Aboriginal and Torres Strait Islander people' – 'Bail application' – 'Exceptional circumstances' – 'Female perpetrator' – 'Protection order' – 'Rehabilitation' – 'Victim as (alleged) perpetrator'

Charges: Aggravated unlawful wounding x 1; Breach of protective bail conditions x 1.

Proceedings: Application for bail.

Facts: The female applicant was awaiting trial for an aggravated unlawful wounding charge against her male ex-partner, the complainant, intending to argue she acted in self-defence. She had pleaded guilty to and was awaiting sentence for a breach of protective bail conditions charge. These conditions had prevented the applicant having any contact with the complainant but she submitted he had forced her to see him. While remanded in custody, the applicant's ex-partner had tried to contact her, but she had refused. She had obtained a Family Violence Restraining Order protecting her from the complainant. She had taken steps towards rehabilitation, including drug and alcohol rehabilitation following an earlier breach of bail conditions for consuming alcohol.

Issues:

1. Whether there were exceptional reasons why the accused should not be kept in custody.
2. Whether the grant of bail would otherwise be proper, having regard to other factors the court must consider under cl 1 and cl 3 of Sch 1 Pt C of the *Bail Act 1982* (WA).

Decision and reasoning: Bail granted.

Issue 1: There were exceptional reasons why the applicant should not be kept in custody. The breach of protective bail conditions charge was towards the lower end of seriousness for offending of its kind, particularly so "if it is accepted, in due course, that the applicant felt under pressure to go with the complainant. It was, in any event, the complainant who initiated the contact on that occasion". There was no suggestion that the applicant was violent or intending to interfere with the complainant as a witness ([90]-[93]).

Further, the applicant had demonstrated a concerted effort to engage in rehabilitation. It was particularly significant that she had engaged in alcohol and drug rehabilitation after she was sentenced for an earlier breach of bail due to consuming alcohol ([94]-[95]).

In addition, it was significant that the applicant had refused to have contact with the complainant while remanded in custody, even though she was permitted to do so. The court noted at [96]:

> "It is an irony in matters of this kind that a person who is remanded in custody for having breached a condition that prevented contact with a complainant is not prohibited from having contact with the complainant once they are in custody".

And continued at [97]:

> "Of course, in circumstances in which the applicant is well aware that she may put her prospects of being released on bail at risk if she were to have contact with the complainant, one might understand that she would exercise caution in that regard. However, the applicant has gone further. She has made an application and been granted the FVRO to prevent the complainant, Mr N, from having contact with her or approaching her. In other words, she has taken positive steps to give effect to the purpose to which cl 2(c) and (d) of sch 1 pt D of the Act are directed. That, it seems to me, is an unusual situation which, in combination with the applicant's steps towards rehabilitation and the hardship that she will be required to endure if she remains in custody in the metropolitan area while her mother and her young child remain in Carnarvon, does amount to exceptional reasons why the applicant should not be kept in custody".

Issue 2: The conditions outlined at [100]-[108] were sufficient to guard against the risk that the applicant would commit a further offence or would either endanger or interfere with the complainant as a witness in these proceeding ([109]).