

## ***Dennis v Lanternier (No 2)* [2017] WASC 5 (12 January 2017) – Western Australia Supreme Court**

‘Breach of restraining order’ – ‘Following, harassing and monitoring’ – ‘Sentencing-protection of victims’ – ‘Threats’

Charges: Breach of violence restraining order (VRO) x 20.

Appeal type: Appeal against sentence.

Facts: The appellant and the victim were married for 14 years but were separated at the time of the offences ([13]). A VRO was granted with the victim as the protected person ([13]). The appellant was prohibited from contacting the respondent except to arrange for contact with his son ([15]). The appellant breached the VRO over a period of 7 months by making a significant number of phone calls to the victim and sending text messages and letters beyond the bounds of the VRO ([18]-[53]). In some instances, the messages included threats to kill the victim and himself. The Magistrate imposed an aggregate sentence of 18 months' imprisonment.

Issues: There were 6 grounds of appeal:

1. the total sentence was manifestly excessive;
2. the Magistrate did not properly take into account the appellant's pleas of guilty which were entered at an early opportunity;
3. the Magistrate failed to consider totality when determining the aggregate sentence;
4. the Magistrate overlooked the appellant's personal circumstances including his wife's breaches of the Family Court consent orders and the appellant's mental state at the time of the offences;
5. the Magistrate made an error of fact by taking into account an untrue submission made by the prosecutor that the appellant had threatened his child; and
6. there was an error in recording the appellant's aggregate sentence as 18 months' imprisonment rather than 15 months' imprisonment ([3]).

Decision and Reasoning: Jenkins J dealt with the grounds of appeal in the following manner:

1. Dismissed ([142]-[175]).
2. Error made out. Jenkins J held that the Magistrate failed to correctly apply s 9AA(5) of the *Sentencing Act 1995* (WA) by failing to state the extent of reduction given to the pleas of guilty for each head sentence ([122]-[124]).
3. Dismissed ([125]-[127]).
4. Dismissed ([128]-[137]).
5. Not possible to decide because part of the proceedings in the Magistrates Court had not been recorded.

Jenkins J did not take this fact into account in deciding the appeal ([138]-[141]).

6. Dismissed. It was clear that the Magistrate meant to impose an aggregate sentence of 18 months' imprisonment ([109]-[110]).

While Jenkins J accepted that ground 2 was made out, the appeal was dismissed because the error did not result in a substantial miscarriage of justice ([184]).

Jenkins J referred to the role of the *Restraining Orders Act* in deterring domestic violence at [152]:

The long title of the Restraining Orders Act reflects Parliament's intention for the Act to provide for orders to 'restrain people from committing acts of family or domestic or personal violence by imposing restraints on their behaviour and activity'. In order for the Act to be effective, offenders must appreciate that if they breach a VRO they will receive a significant penalty. The community and the courts have [an] intolerance and abhorrence of violence and threatened violence in domestic and former domestic relationships. The penalties imposed for breaches of VROs must reflect that intolerance and abhorrence, in the hope that the penalties deter offenders and protect victims.