

***Weston v Cartmell* [2015] WASC 87 (16 March 2015) – Western Australia Supreme Court**

‘Bail’ – ‘Breach of bail’ – ‘Following, harassing, monitoring’ – ‘Sentencing’ – ‘Totality’ – ‘Trespass’

Charge/s: Trespass, Breach of bail (numerous counts).

Appeal Type: Appeal against sentence.

Facts: The appellant’s marriage with his wife (the complainant) ended. The complainant had purchased a new house and the appellant climbed the fence and walked around the property for some time. He had some property including vehicles at the house. The appellant then forced entry and was restrained by the complainant’s male friend who was at the home before police arrived. After being released on bail with conditions that he not contact or attempt to contact the complainant, he breached this bail by attempting to contact her via email 153 times. He also made 126 phone calls or text messages. These communications occurred while the appellant was living in New Zealand. The appellant and the complainant had shared business interests. The appellant also had an interest in the complainant’s home because part of the deposit for the home had been paid from a bank account in which the appellant had an interest. The prosecution accepted that many of the communications related to these business matters. A total effective sentence of 16 months’ imprisonment was imposed.

Issue/s: Whether the total effective sentence did not bear a proper relationship to the overall criminality.

Decision and Reasoning: The appeal was upheld. The appellant submitted that the sentence should have been suspended.

Hall J noted that while the large number of breaches of bail made this offending serious, the personal circumstances of the appellant were exceptional. Given that many of the communications related to business issues, it is difficult to conclude that the communications were intimidatory. As his Honour noted at [39] – *‘The number of the communications could not be viewed in isolation from their purpose and subject matter. There was no evidence that any of the communications were harassing or threatening in tone, content or nature. There was no information regarding communications being at inconvenient times or being deliberately repetitive.’*

Furthermore, the evidence indicated that the conduct was out of character. The appellant had previous good character, a solid employment history, surrendered himself to police and fully cooperated. This indicated an acceptance of responsibility and remorse. He was at minimal risk of re-offending so specific deterrence was not significant. While general deterrence is important in sentencing breaches of bail and 'Compliance is likely to be undermined if breaches are dealt with by derisory penalties' (see at [43]), this did not mean that the term of imprisonment could not be suspended in this case. As such, the total effective sentence was suspended for 12 months.