

***R v In* [2001] ACTSC 102 (2 November 2001) – Australian Capital Territory Supreme Court**

‘Assault occasioning bodily harm’ – ‘Emotional and psychological abuse’ – ‘Exposing children’ – ‘General deterrence’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Risk factor-suicide threats’ – ‘Sentencing’ – ‘Unlawful confinement’

Charge/s: Unlawful confinement, assault occasioning bodily harm.

Hearing type: Sentencing hearing.

Facts: The offences occurred after the male offender and his wife, the complainant, had separated and the offender had moved out of the family home. He occasionally stayed overnight to see the children. After seeing his wife kiss another man, the offender arrived at the family home late at night, when the children were present in the house. The complainant let him in and went back to bed. The offender followed her and sat on top of her. He placed a sharp object against her throat and said, ‘This is a knife. If you move I will fucking kill you’. He then placed pre-cut strips of duct tape over the complainant’s mouth and eyes. He bound her wrists and ankles and tied her hands and feet together. He said, ‘You’ll have your wish — you’ll see me die tonight, you’ll see me die’.

The complainant had difficulty breathing and the offender removed the duct tape. He interrogated her about her relationship with the other man, hitting her several times around the head and shoulders. He left the room saying, ‘If you fucking move I’ll kill you’ and returned with a telephone book. The offender asked for the other man’s phone number before leaving the room again. The complainant heard him enter the nearby bedroom, occupied by two of their daughters and heard him say, ‘Now take this darling. I know it tastes awful, doesn’t it’.

He returned to the complainant and resumed interrogating her, striking her. He said multiple times that he was going to kill himself and take the children with him. The offender eventually became tearful and untied the complainant. She rang the emergency number and asked for an ambulance, thinking her children had been poisoned. The police and ambulance arrived. The children were unharmed. The offender left the premises and went to the police station the next morning.

Decision and Reasoning: The offender was sentenced to 6 years imprisonment for unlawful confinement and 3 years imprisonment for assault, concurrent and a non-parole period of 18 months. Crispin J took into account a number of subjective factors in imposing this sentence. The offender pleaded guilty. At the time the offender entered the house, while there was some measure of pre-meditation in the appellant's actions (the decision to confine and interrogate the complainant), the offender did not intend to threaten the complainant with a knife or to kill his children. The offender stopped the violence and threats of his own volition.

At the time of offending, the offender was suffering from serious psychological illnesses including acute depression and adjustment disorder. It was submitted on the offender's behalf that, because of this illness, this made the offender an inappropriate vehicle for general deterrence. Crispin J disagreed and stated,

'The extent of his psychological condition is relevant to the issue of general deterrence but, in my view, the need to protect former spouses or partners from conduct of this nature cannot be so easily dismissed. Many people no doubt experience great stress upon the breakup of their marriages or other close relationships and in some cases they may suffer from symptoms of an underlying psychological illness or even become psychologically ill for the first time. One may and should respond with sympathy. However, when a person commits serious criminal acts against a former spouse or partner the court must take into account the need to deter other people from similar conduct. The risk of serious injury and, as in this case, grave emotional trauma may be at least as serious when the offender is psychologically ill. Accordingly, the need for deterrence should be given due recognition, though the weight which should be given to that factor will vary according to the circumstances of the case, and the actual sentences must be determined by reference to all relevant factors' (See [19]).

Other relevant factors included that the offender was remorseful, he had no prior convictions and was previously a committed father and a person of impeccable character. He had taken steps to obtain counselling and achieved a significant measure of rehabilitation. He had already been imprisoned for 8 months and this caused significant distress in light of his inability to see his children and his potential to be a suicide risk.

However, Crispin J was unable to accept counsel submissions that the offender should be released on parole immediately. The offences were too serious to be dealt with in that manner — the complainant was confined for an extended period and intended to cause significant fear in the complainant.