

***R v Seears* [2015] ACTSC 109 (23 April 2015) – Australian Capital Territory Supreme Court**

‘Aggravated burglary’ – ‘Assault occasioning actual bodily harm’ – ‘Damaging property’ – ‘Emotional and psychological abuse’ – ‘Intentionally cause damage to property’ – ‘Physical violence and harm’ – ‘Sentencing’

Charge/s: Aggravated burglary (armed and intent to cause harm).

Hearing: Sentencing hearing.

Facts: S left her male partner, the offender, to be in a relationship with another man (the victim). Thereafter, the offender sent many abusive and threatening text messages to S. On the morning of 26 May 2013, the intoxicated appellant drove to the victim’s house, where S was now living. He was carrying a 1.2 metre spirit level and a bag with an angle grinder, cable ties, electrical tape, a kitchen knife and a timber-handled holding knife. The offender used the spirit level to smash the window of the victim’s bedroom, where the victim and S were asleep. The victim asked the offender what he was there for to which the offender replied, ‘You know what I’m here for; I’m going to kill you’ and ‘You’re sleeping with my wife’. He continued to scream at the victim as the victim walked away. The offender then struck the victim with the spirit level on the left arm and left side of his head, causing significant lacerations. S tried to intervene as the offender punched the victim in the face, threatening to kill him. The police were called and the offender removed.

Decision and Reasoning: The offender was sentenced to 3 years and 1 month imprisonment with a non-parole period of 18 months. In imposing this sentence, Murrell CJ took into account a number of considerations. First, the offender had a history of taking the law into his own hands. He was on bail for common assault at the time of the offences and had previously committed offences of common assault. Second, Her Honour took into the offender’s subjective circumstances namely, the offender’s intention to ‘settle down’ by continuing his employment in the building industry and removing himself from his involvement in the Rebels Motorcycle Gang. However, she noted that it was surprising that someone at age 63 had not ‘learnt his lesson from a series of prior similar incidents’. Third, the objective circumstances were of at least moderate seriousness (See [26]-[33]). Finally, Her Honour took into account general sentencing considerations (See [35]-[40]).