

***R v Bell* [2005] ACTSC 123 (1 December 2005) – Australian Capital Territory Supreme Court**

‘Impact of domestic violence on women and children’ – ‘Persons affected by substance misuse’ – ‘Physical violence and harm’ – ‘Rehabilitation’ – ‘Risk factor- strangulation’ – ‘Sentencing’

Charge: Assault occasioning actual bodily harm

Proceeding: Sentencing

Facts: The offender and victim had previously been in a relationship and had two children together. The offender and victim’s version of events differed. The victim alleged that after consuming alcohol with the offender one night, the offender dragged her out of bed, hit her three times in the face and put his hands around her neck and pushed his thumbs into her throat. While doing so, the offender said something to the effect of “Slut, I’ll kill you, I’ll kill you”. When she woke up the next morning the offender continued to follow and abuse her. The offender said that the offending occurred after he blacked out after drinking substantial amounts of alcohol. He said that the assault occurred after the victim, who was drunk, was following him between pubs and abused him verbally and physically by kicking him. After she got in an altercation with a patron, she was removed from the pub and was spoken to by police officers. The offender agreed to take the victim home, where they sat outside smoking marijuana and drinking bourbon. They then got in an argument over their children and the victim struck the offender. According to the offender, this is when he grabbed her throat and beat the victim.

Higgins CJ, after hearing corroborating witnesses, accepted that the assault occurred in the way described by the offender. However, he did not suggest that the victim was fabricating her account: ‘She was savagely beaten, she had a lot to drink and it is unsurprising that some of the details became confused in her mind’ ([26]).

In relation to this conduct the offender was charged and pleaded guilty to one count of assault occasioning actual bodily harm.

For three months prior to the assault, the offender had undergone rehabilitation at Oolong House. He had a long history of offending, including 28 prior assaults. Most of the previous offending occurred after the offender had consumed alcohol. While he acknowledged his alcohol abuse, the offender did not consider he needed drug and alcohol intervention. He also admitted to feeling ‘horrified by what he had done’ and said ‘violence towards women is not in his makeup and he has no excuses for what he has done’.

Issue: What sentence should the offender receive?

Decision and reasoning: The offender was sentenced to two and a half years' imprisonment with a non-parole period of 18 months. While the preceding conduct on the night of the offending and the alcohol abuse engaged in by both the parties may explain the offending, it did not excuse it. There were some prospects of rehabilitation for the offender. However, having regard to the severity of the attack and the offender's criminal history and alcohol abuse, a sentence of imprisonment was appropriate: 'No other sentence will say to men who abuse women that such conduct is abhorrent and will result in severe punishment whatever the status or record of the offender' ([32]).

In considering the purposes of sentencing domestic violence offending, Higgins CJ noted that while alcohol may have been a triggering factor, offenders must take responsibility for their actions and be seen to do so. As domestic violence offences are often hidden, general deterrence is also an important consideration in sentencing. So too is specific deterrence. Higgins CJ emphasised that domestic violence '*is a pernicious and evil phenomenon not only because of the immediate trauma to the victim. Its evil influence spreads to children as well. It is no coincidence that, in my experience, young offenders, more often than not, present with a family history of domestic violence. It used to be regarded as a family matter, to be kept private. Victims would be made to feel humiliated, and ashamed to complain; in truth it is entirely the criminal conduct of the perpetrator which is at fault. It is entirely in the public interest that such conduct be exposed and deterred*' ([30]).