

***R v Rogers* [2014] ACTSC 124 (1 April 2014) – Australian Capital Territory Supreme Court**

‘Assault occasioning actual bodily harm’ – ‘Denunciation’ – ‘Deterrence’ – ‘Emotional and psychological abuse’ – ‘Exposing children’ – ‘History of abuse’ – ‘Late plea’ – ‘People affected by substance misuse’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Risk factor-strangulation’ – ‘Systems abuse’ – ‘Unlawful confinement’

Charges: Unlawful confinement, assault occasioning actual bodily harm (two counts)

Proceeding: Sentencing

Facts: The offender and victim were in a domestic relationship. The victim had a son from a previous relationship. Six months after moving in together, the offender sat on the victim’s stomach, held both arms above her head and tied her wrists to the bed. The offender told the victim, “*you’ve hurt my feelings. Now you have to pay. I’m going to take you for a drive to the forest and I’m going to kill you*”. He then slapped her across the face several times and stuck a piece of clothing in her mouth. The victim was gagging and choking and believed that she would suffocate. The offender then hit the victim’s thigh with a car aerial and held a lit match to her face, threatening “*have you ever played ‘light the match’ game?*”. The next day the offender brought the victim flowers and apologised. Several days later the victim woke up to the offender slapping her face. Her son then walked into the room but returned to his bedroom after the offender screamed at him. The victim packed herself and her son into the car to escape after the offender had left. However, the offender returned and parked his car behind the victim’s car. He grabbed the victim’s shoulders, pushed her backwards causing her to hit to head and dragged her into the house. When inside, he grabbed her throat, kicked her, forced her face under a running tap, slapped her and threatened her.

The offender was charged with unlawful confinement and two counts of assault occasioning actual bodily harm. He maintained a plea of not guilty for nearly two years until changing his plea to guilty on the date the trial was to begin.

The offender had a long history of offending including convictions of nine common assaults, assault occasioning actual bodily harm, stalking and two breaches of domestic violence orders. He also had a history of dysfunctional relationships, with many of these convictions resulting from domestic violence. He abused prescription drugs and suffers from Attention Deficit Disorder, depression and bipolar. During one period of excessive drug use, the offender was diagnosed with amphetamine-induced paranoid psychosis. The offender engaged in the methadone program and drug and alcohol counselling to address his substance abuse. He reported that since the offending, he had ceased using drugs or drinking heavily and that he was no longer short-tempered and jumpy.

Issue: What sentence should the offender receive?

Decision and reasoning: Penfold J emphasised the need for general deterrence and denunciation for domestic violence offences. Having regard to the offender's criminal history and his repeated failures to take advantage of rehabilitative opportunities, rehabilitation was not the highest priority in sentencing. His Honour accepted some concession was needed for the offender's improved behaviour in the two years since the offending and his continued engagement with mental health services. However, no sentence other than imprisonment was appropriate when considering the gravity of the offending and the effect on the victim and her son.

The offences were all serious examples of the relevant offences. The presence of the victim's son during the second assault occasioning actual bodily harm aggravated the offence. All the offences were further aggravated by the breach of trust that is 'inherent in most if not all domestic violence offences, especially those that occur in the privacy of a home shared by the victim and the perpetrator, a circumstance which of itself — that is the sharing of the home — seems to me to establish a mutual relationship of trust' ([7]).

Penfold J sentenced the offender to a total sentence of 38 months' imprisonment, suspended after 24 months. This total sentence comprised of 25 months' imprisonment for the offence of unlawful confinement, 18 months' imprisonment for the first offence of assault occasioning bodily harm, and 20 months' imprisonment for the second offence of assault occasioning bodily harm. The first assault occasioning bodily harm sentence was ordered to be accumulated so as to add three months to the unlawful confinement offence and the second assault occasioning bodily harm sentence was ordered to be accumulated so as to add 10 months to the total sentence.