

***Ross v Mothersole* [2010] ACTSC 125 (19 October 2010) – Australian Capital Territory Supreme Court**

‘Assault occasioning actual bodily harm’ – ‘Drug and alcohol programs’ – ‘Glassing’ – ‘People affected by substance misuse’ – ‘Physical violence and harm’ – ‘Plea of guilty’ – ‘Victim contribution’ – ‘Victim's views’

Charge/s: Assault occasioning actual bodily harm, assault, threatening to harm a public official, obstructing a public official.

Appeal type: Appeal against sentence.

Facts: The male appellant and the female victim of the two assaults were in a relationship. The first offence occurred when the intoxicated appellant swore at the victim and smashed a beer glass in her face. She required five stitches (assault occasioning actual bodily harm). At the watch house, the appellant threatened violence against police officers and resisted search attempts. On a subsequent occasion, the appellant and the victim were out drinking together and, during the course of argument, the appellant yelled, ‘I could kill you right now and no-one would ever know’. He then put the victim into a headlock, and head-butted and punched the complainant in the face (assault). A total head sentence of 36 months imprisonment was imposed with a non-parole period of 18 months.

Issue/s: The sentence for the assault occasioning actual bodily harm was manifestly excessive.

Decision and Reasoning: The appeal was allowed. The sentencing magistrate failed to take proper account of the appellant’s plea of guilty in sentencing (See [78]). Refshauge J noted that it is very desirable that a sentencing magistrate or judge makes express reference to the issue of a plea of guilty to show that it has been taken into account. Further, the sentencing magistrate did not address the relevant mental state of the appellant (intention or recklessness). Refshauge J stated, ‘there is no doubt that “glassing” is a serious offence, whether intentionally (significantly more serious) or recklessly. It is a cruel and vicious offence, especially where the damage done is to the victim’s face, the scars from which will be long obvious and distressingly disfiguring. It is a serious offence which ordinarily will need to be visited by a sentence of imprisonment, mostly served by full-time custody’ (See [88]). However, notwithstanding this, on the facts, it was more likely than not that the appellant did not intend to use the glass as a weapon (See [90]).

In re-sentencing the appellant, Refshauge J had regard to a letter from the victim. It showed that she was still devoted to the appellant and wanted to maintain their relationship. She stated, *' I know he is truly sorry for hurting me and the time he has spent in jail he has not wasted one day doing everything possible to completely turn his life around, every course available in the prison Egan has not only completed but done so with proud achievement'*. This showed that the insight and rehabilitative opportunities noted in the original sentencing hearing had been fulfilled and the appellant had addressed his offending behaviour (See [92]-[94]). The appellant was re-sentenced to 2 years imprisonment for the assault occasioning bodily harm. The other sentences were confirmed leaving a head sentence of 30 months, with a non-parole period of 10 months.