

***R v Guy* [2015] ACTSC 237 (5 August 2015) – Australian Capital Territory Supreme Court**

‘Assault’ – ‘Assault occasioning actual bodily harm’ – ‘Breach of good behaviour order’ – ‘Childhood disadvantage’ – ‘Damaging property’ – ‘People affected by substance misuse’ – ‘People with mental illness’ – ‘Rehabilitation’ – ‘Risk factor- strangulation’ – ‘Sentencing’

Charges: Damaging property, assault, assault occasioning actual bodily harm

Proceeding: Resentencing

Facts: The offender was charged and pleaded guilty to damaging property for breaking a window in his partner’s house. He was convicted and sentenced to one month’s imprisonment. This conviction breached a good behaviour order that was made after he was convicted for assaulting his partner. He was sentenced to six months’ imprisonment, wholly suspended upon complying with a good behaviour order for two years. The good behaviour order was cancelled as a result of the breach and the six months’ suspended sentence was imposed, but was ordered to be served concurrently with another term of imprisonment. The offender successfully appealed this sentence. A sentence of six months’ imprisonment wholly suspended on the condition of a 12-month good behaviour order was imposed on appeal. A good behaviour order for the offence of damaging property was also made.

The offender was subsequently convicted of traffic offences, constituting a breach of both good behaviour orders. As a result, the good behaviour bond imposed for the offence of damaging property was extended for a further 12 months. He was also resentenced to six months’ imprisonment on the assault charge, suspended for a period of 12 months on the conditions of a further good behaviour order for 12 months and 80 hours of community service. This effectively increased the length of the good behaviour orders as well as requiring the offender to perform community service work.

The offender again breached these good behaviour bonds when he was convicted of assault occasioning bodily harm. This conviction arose when the offender choked his partner and threw a chest of drawers that hit her in the head. In relation to this offence, he was sentenced to 18 months’ imprisonment, suspended after nine months with a good behaviour order for two years thereafter.

Issue: How should the offender be resentenced for the final breach of the two good behaviour orders?

Decision and reasoning:

The offender suffered a difficult childhood in which he was sexually abused and had great difficulties in school as a result of having ADHD and dyslexia. After leaving school at 14, he was homeless for many years. He also had a long history of drug and alcohol abuse. The offender also suffered from various mental illnesses, including major depressive disorder, borderline personality disorder and antisocial personality traits, for which he was receiving treatment. He had a long criminal history with 122 offences on his criminal record. This reduced towards the time of offending in question and suggested his criminality was abating.

The final breach of the good behaviour orders was serious when considering ‘the offence was a family violence offence committed on a complainant who had been the victim of earlier offences of a similar type committed by [the offender], for which the current Good Behaviour Orders owe their genesis’ ([37]). However, there was a need to take into account the offender’s mental health. Refshauge J considered that ‘the option for rehabilitation can be given greater prominence without minimising the need for some level of special and general deterrence’ ([38]).

Refshauge J cancelled the good behaviour orders in accordance with s 110 of the *Crimes (Sentence Administration) Act 2005* (ACT). The conviction of assault occasioning actual bodily harm was confirmed. The offender was convicted to six months’ imprisonment, wholly suspended for a period of two years. A good behaviour order was made for two years with the conditions that the offender would be supervised, must complete 180 hours of community service, and must participate in the Detention Exit Community Mental Health Outreach Program for three months. The conviction for damaging property was also confirmed and the offender was sentenced to one month’s imprisonment, taking into account the time already spent in custody.

Refshauge J concluded by telling the offender, ‘If you are genuine in your efforts, the Court will support you in this, as I hope I have shown you, but if you are not, then you can expect further custodial sentences and a revolving door’ ([57]).

For Refshauge J’s previous decision on appeal, see *Guy v Anderson (No 2)* [2013] ACTSC 245.