

***R v Stanley* [2015] ACTSC 322 (12 October 2015) – Australian Capital Territory Supreme Court**

‘Assault’ – ‘Damaging property’ – ‘Deterrence’ – ‘People affected by substance misuse’ – ‘Physical violence and harm’ – ‘Rape’ – ‘Risk factor- strangulation’ – ‘Sentencing’ – ‘Sexual and reproductive abuse’ – ‘Totality’ – ‘Victim impact statement’

Charges: Assault occasioning actual bodily harm (two counts), damaging property, engaging in sexual intercourse without consent (two counts)

Proceeding: Sentencing

Facts: The offender and the victim were in a relationship. After drinking three bottles of wine one night, the offender smashed a bottle and jar because ‘he was angry’. The victim decided to stay at her mother’s house and that it was best to take the offender’s car keys. When she went to get them, the offender grabbed her by her hair, threw her to the ground, stood over her, stomped on her face and chest and punched her a number of times. During the attack, the offender told the victim ‘This is what you get for lying to me’ and threatened to kill her. He then put his hands around her neck and tried to strangle her (count 1). When the victim tried to phone someone for help, the offender snapped her mobile in half (count 2). About 15 minutes after the initial attack had ended, the offender grabbed the victim by the back of her neck, smashed a mug over her head and hit her multiple times with the smashed mug. After the mug broke, he went to get another mug and again hit her, causing a large laceration to the victim’s head (count 3). After the victim had a shower, the offender told her ‘Now that I have done that to you, we are going to do everything my way from now on. It is not your way, it is going to be my way, okay.’ He then put his penis into the victim’s mouth despite her resisting and turning her head away (count 4) and forced her legs apart and had sexual intercourse with her (count 5).

The next morning the offender asked the victim what had happened. When she told him and asked to be taken to the hospital, he refused until later that day. The offender later apologised to the victim and told her, ‘If you tell the police then we will not see each other again’.

In relation to this conduct the offender was charged and pleaded guilty to two counts of assault occasioning actual bodily harm (counts 1 and 3), one count of damaging property (count 2) and two counts of engaging in sexual intercourse without consent (counts 4 and 5).

Issue: What sentence the offender should receive.

Decision and reasoning: Refshauge ACJ began his judgement by emphasising the seriousness of domestic violence and the considerations relevant to sentencing offenders: ‘*Domestic violence is a scourge in the Australian community. It has become so problematic that significant efforts are being made at the Federal, State and Territory levels to address it. Clearly, the courts have a part to play in denouncing such conduct and making it clear that in a civilised society it is completely unacceptable. In sentencing offenders who commit domestic violence against their partners, the courts must use the objectives to be achieved in sentencing: general deterrence, specific deterrence, accountability of the offender and vindication of the victim, as well as denouncing the conduct. Nevertheless, at all times a sentence for any criminal offence must be appropriate to the circumstances of the offence and proportionate to the criminality of the offence and the culpability of the offender*’ ([1]-[4]).

The offender had a long history of alcohol abuse and alcohol related violence. He had previously been convicted of a violent assault on his previous partner, two offences of drink driving and driving while disqualified. While in custody, the offender completed the SMART Recovery Program and First Steps to Anger Management Program to address his alcohol abuse and violence. He also accepted that he had an alcohol problem and expressed remorse about the offending and its impact on the victim.

References about the offender were provided by his employer (he was employed as a wards person in a hospital), his brother-in-law and his pastor. All three references described him as a respectful and caring person of good character. His brother-in-law and pastor also commented on the positive changes the offender made while in custody. He developed his faith in God, was obedient and respectful of authority, enjoyed the education and rehabilitation programs available and was very remorseful about his conduct in harming the victim. The victim also prepared a victim impact statement in which she expressed her continued serious emotional trauma and its impact on all areas of her life including friends, family, work and finances.

The offending was very serious with the whole of the events constituting a ‘brutal, extended attack on a victim which not only left her with physical scars but with social and mental scars that will last for some considerable time’ ([70]). The facts the assaults occurred in the context of a domestic relationship and the victim suffered injuries were aggravating factors. The circumstances in which the property was damaged also made the offence more serious: ‘To deny a victim of a brutal assault the opportunity to gain assistance would have increased the terror she must have experienced and has aggravated the offence’ ([67]). The sexual assaults violated the victim’s integrity and were a serious intrusion into her personal life despite occurring in the context of a domestic relationship.

In sentencing, Refshauge ACJ emphasised the need for special and general deterrence to denounce the offences committed by the offender. While the offender had taken positive steps in rehabilitation, this could not overbear the other purposes of sentencing. Rather, it was taken into account in setting the non-parole period. The seriousness of the offending meant that imprisonment was the only appropriate sentence. After considering the principle of totality and ensuring the offender was not punished twice, Refshauge ACJ sentenced him to a total sentence of six years' imprisonment, backdated for the time already spent in custody. A non-parole period of three years and three months was also ordered. The total sentence comprised of:

- > Count 1: one year and eight months' imprisonment;
- > Count 2: one year imprisonment, cumulative as to four months on the sentence for count 1;
- > Count 3: two years imprisonment, cumulative as to one year on the sentence for count 2;
- > Count 4: three years imprisonment, cumulative as to one year and three months on the sentence for count 3;
- > Count 5: three years and six months imprisonment, cumulative as to one year and nine months on the sentence for count 4.