

***R v Mazaydeh* [2014] ACTSC 325 (13 November 2014) – Australian Capital Territory Supreme Court**

‘Animal abuse’ – ‘Assault occasioning actual bodily harm’ – ‘Common assault’ – ‘Denunciation’ – ‘Deterrence’ – ‘Emotional and psychological abuse’ – ‘Perpetrator programs’ – ‘Physical violence and harm’ – ‘Threatening to cause damage to the complainant’s property’ – ‘Victim impact’

Charge/s: Assault occasioning actual bodily harm, common assault x 3, threatening to cause damage to the complainant’s property.

Hearing: Sentencing hearing.

Facts: The offender was a friend and former partner of the female complainant. The offender became jealous when the complainant received a phone call because he suspected it was from another man. The complainant asked the offender to leave her apartment. He refused. He pushed and attempted to choke the complainant and held a knife to the throat of her cat. The assaults were accompanied by verbal abuse and abusive text messaging. The offender also rifled through the victim’s belongings and demanded her phone. The incident lasted about 15 minutes.

Decision and Reasoning: The offender was sentenced to a good behaviour order for 3 years and fined \$1750. In terms of the objective seriousness of the offending, Murrell CJ noted that the conduct constituting the assault occasioning bodily harm was extremely serious. It was a very forceful and frightening assault that involved the offender taking hold of the victim’s throat. The actual bodily harm that resulted was at the lower end of the spectrum but the incident had a considerable psychological impact. The other offences were less serious. The incident, while not fleeting, was relatively short. It was not only frightening but designed to humiliate. It occurred within the victim’s home, in circumstances where she had asked him to leave.

Further, this was an incident of domestic violence. Her Honour noted:

‘These offences occurred in the context of a previous relationship between the offender and the victim and involved violence within the victim’s home, an apparent sense of entitlement on the part of the offender, and humiliation through verbal and text abuse of the victim.’

The sentencing purposes of punishment, general deterrence and denunciation are very important, as well as the recognition of harm to the victim personally and the community generally through offences of this nature. The victim provided a victim impact statement in which she referred to impacts upon her of the type that frequently result from offences of domestic violence, including feelings of anxiety, difficulty sleeping, difficulty concentrating at work and elsewhere, and an adverse effect on her ability to form relationships. Since the incident, the victim has moved house because she felt unsafe in the apartment where the offence occurred' (See [15]-[16]).

Her Honour also took into account the subjective circumstances of the offender including that the offender had been assessed as being at low risk of re-offending, he was employed, is a member of a close and supportive family and has no problems with drug dependence or mental health. However, Murrell CJ further noted that the offender lacked insight into the seriousness of his conduct and the impact on the victim. Although this was probably a one-off incident, Her Honour considered that it would be of assistance to the offender to undertake courses that may guide him towards greater insight and maturity in relation to interpersonal relationships.