

***R v East* [2015] ACTSC 54 (16 February 2015) – Australian Capital Territory Supreme Court**

‘Common assault’ – ‘Criminal history’ – ‘Forcible confinement’ – ‘Offender’s traumatic childhood’ – ‘People affected by substance misuse’ – ‘People with disability and impairment’ – ‘Physical violence and harm’ – ‘Sentencing’

Charge/s: Forcible confinement, common assault.

Hearing: Sentencing hearing.

Facts: The offender was the complainant’s carer and partner. They had been in an ‘on again off again’ sexual relationship for 3 years and the offender had recently moved back into the complainant’s flat. On 14 October 2013, during an argument, the complainant told the offender to get his belongings and leave the flat. She then attempted to leave herself but the offender grabbed her arms and forced her back into the flat. The complainant made a number of unsuccessful attempts to escape and the offender took her mobile phone. The offender refused to leave. At one stage, he agreed to pack his belongings and asked the complainant for some money. When she refused, he forced her onto the couch. She tried to yell but the offender grabbed her throat, restricting her ability to breathe. After 5 hours, the offender gave the complainant her mobile and left the flat. These offences put the offender in breach of a good behaviour order imposed in respect of an earlier offence of a reckless threat to kill made against the same complainant. That offence involved the heavily intoxicated and distressed offender threatening his partner with a knife, a hammer and a piece of concrete.

Decision and Reasoning: The offender was sentenced to 22 months imprisonment, with a non-parole period of 10 months. Penfold J took into account a number of factors in imposing this sentence. In determining the charged offences to be of mid-range seriousness, His Honour noted that in some cases being confined in one’s own home by a partner might be less frightening than being confined in a strange place by a stranger (depending on past experiences with the partner); during confinement, the offender was physically violent to the complainant; the offender was on conditional liberty at the time of the offence; the domestic relationship put the parties into a position of trust and, to an extent, the offender abused this trust (however, the offender’s role as a carer did not mean that the offence involved any extra abuse of a position of trust because the complainant was 14 years older and the offender had a very disturbed upbringing); the offences had a distressing and more than short-term effect on the complainant; and the offender accepted responsibility for his actions (See [13]-[14]).

Penfold J also took into account the subjective circumstances of the offender. He did not seem to have any tendency towards criminal behaviour except in the context of this relationship. However, His Honour noted that ‘much of violent crime committed within domestic relationships is committed by men who otherwise live entirely within the law’. Further, the offender had a very disturbed upbringing. His mother suffered with severe mental illness and schizophrenia and would alternate between being a loving mother to being emotionally and physically abusive towards her children. He witnessed his mother kill herself when he was 8 when she set herself alight. The offender was then raised by his adoptive father, who would drink heavily to cope and belt the children (See [15]-[17]). The relationship between the offender and the complainant was ‘toxic’ and characterised by substance abuse and conflict (See [18]-[22]). Penfold J also took into account general and specific deterrence, the offender’s guilty plea and the offender’s acceptance of counselling.