

***R v Thompson* [2015] ACTSC 69 (20 March 2015) – Australian Capital Territory Supreme Court**

‘Aggravated burglary’ – ‘Emotional and psychological abuse’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Rehabilitation’ – ‘Unlawful confinement’ – ‘Young people’

Charge/s: Aggravated burglary, unlawful confinement, common assault, carry/use a firearm with disregard for own safety or safety of other persons.

Hearing: Sentencing hearing.

Facts: The 26 year old male offender and the 21 year old female complainant commenced a relationship after meeting on an online dating website. Five weeks after their first meeting, the complainant told the offender that she wanted to end the relationship but wished to remain friends. The complainant then went overseas for 2 months. Upon her return, the offender tried to re-commence their relationship but the complainant did not want to. At a meeting between the pair, the offender said the complainant was ‘cruel’, ‘yelled at him’ and ‘humiliated him’. A month later, the complainant was home alone in her apartment. The offender sprung out from behind a door, covered her mouth with a gloved hand and told her not to scream. In his other hand, he was holding a gun. There was a struggle in which the offender tackled the complainant onto the bed and held a gun against her chest. The complainant was confined to the apartment for 3 hours.

Decision and Reasoning: Imprisonment was the only penalty appropriate in the circumstances. These were very serious offences — the complainant was in her own apartment which the offender broke into, he carried a gun, he wore medical gloves, held the gun against the complainant’s chest, and confined the complainant in terrifying circumstances for 3 hours. However, on the balance of probabilities, Robinson AJ found that the offender was suffering from a depressive mental illness on the day of the offence. The moral culpability of the offender was reduced, although not eliminated, by this depressive illness. There was a moderate risk of reoffending but His Honour concluded the offender had very good prospects for rehabilitation in light of the treatment of his mental illness and his new relationship. In the circumstances, it was desirable to give weight to the promotion of the rehabilitation of the offender. Accordingly, the offender, was sentenced to a total effective sentence of 2 years imprisonment, suspended from 9 December 2015.

Note: the convictions in relation to this case were set aside and a retrial was ordered because the trial judge failed to provide a warning pursuant s 38E of the *Evidence (Miscellaneous Provisions) Act 1991* (ACT) (see *Thompson v The Queen*; *The Queen v Thompson* [2016] ACTCA 12 (6 May 2016)).