

R v MJ [2016] NSWDC 272 (12 May 2016) – New South Wales District Court

‘Assault occasioning bodily harm’ – ‘General deterrence’ – ‘Myths and misunderstandings’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Sexual and reproductive abuse’ – ‘Sexual intercourse without consent’ – ‘Specific deterrence’ – ‘Women’

Charge/s: Assault occasioning bodily harm x 5, sexual intercourse without consent, common assault x 4, breach of AVO x 5.

Hearing: Sentencing hearing.

Facts: After being found guilty in a trial by jury, the offender was sentenced for 10 domestic violence offences committed against his former female partner. The offender was also sentenced for a number of other charges namely, driving disqualified and numerous breaches of an Apprehended Violence Order (AVO).

Decision and Reasoning: Berman J imposed an aggregate sentence of 14 years imprisonment with a non-parole period of 10 and a half years. At the outset, His Honour noted that: *‘Women, and it is usually women, too often find themselves subjugated to the demands of their partners, who seem to regard it as entirely acceptable for them to control and manipulate someone with whom they are in a relationship through violent and degrading means’* (see [1]).

Berman J noted that the offender here felt a sense of entitlement and ownership over the victim and blamed her for his violent behaviour. His manipulation of the victim, using violence and protestations of love, was so effective that she did not leave the relationship (even after she had been repeatedly beaten and raped) until she received counselling (see [4]). She was left with significant physical and psychological injury (see [26]).

Moreover, there were a number of serious features of this offending. The victim was assaulted in her own home. Many of the offences occurred in context of offender’s demands that the victim withdraw a complaint she made to the police about him. There were similarities in the way he had treated a previous partner. Some offences were committed in the presence of the victim’s daughter. Many offences constituted breaches of an AVO and demonstrated contempt of these orders (see [28]-[30]).

In the context of mitigating factors, His Honour acknowledged that the offender grew up with domestic violence as a feature of his early life. However, this was not a case in which the offender thought that such behaviour was normal and acceptable because his stepfather was a good role model for him (see [33]-[40]). The offender had taken some steps towards rehabilitation and some references spoke positively of his character (showing how an offender can have a very different face in private life) but there was still need for the sentence to reflect an element of specific deterrence (see [42]-[43]). More importantly, the sentence needed to take into account general deterrence. As per Berman J:

‘Offences such as these cause enormous harm, both to the individual victims concerned and to the community generally. Offenders who commit crimes such as I have described, particularly after they have been subject to apprehended violence orders, put in place to protect their partners from precisely such conduct, need to be given in sentences which will deter others who may be tempted to act in a similar way. Most fundamentally in assessing the relevant sentence to impose upon the offender is, of course, the objective gravity of what he has done’ (see [42]).