

***R v Smith* [2021] ACTSC 114 (3 June 2021) – Australian Capital Territory Supreme Court**

‘Assault’ – ‘Breach of protection order’ – ‘Coercive control’ – ‘Extensive criminal history’ – ‘History of domestic and family violence’ – ‘People affected by trauma’ – ‘Plea of guilty during trial’ – ‘Sentence’ – ‘Separation’ – ‘Sexual intercourse without consent’ – ‘Strangulation’ – ‘Suicide threat’

Charge: Sexual intercourse without consent; contravention of family violence order (FVO); the pleas in full satisfaction of the indictment on the basis that the facts relating to a charge of choking, suffocating or strangling, and three transfer charges of common assault, would be taken into account in relation to the contravention of the FVO.

Facts: The offences were committed by the male offender against his female partner over 2 days in March 2020. Their relationship involved domestic violence, including controlling and abusive behaviour by the offender towards the victim. An incident of assault by the offender against the victim in February 2019 led to criminal charges and an FVO was made by the ACT Magistrates Court on 7 May 2019 for 12 months. On the offender’s release from custody after serving a sentence of imprisonment for the assault the parties resumed cohabitation. The victim sought to leave on 24 March, booking herself into a hotel. In a series of text messages the offender threatened suicide and urged the victim to return, which she did. The offender repeatedly applied force to the victim’s throat over a period of 10 minutes causing her to become short of breath, then removed her underpants and digitally penetrated her vagina without her consent and wiped his hands on her face. The offender forced the victim to drive him to McDonalds, and when they returned questioned her, and not accepting her answers, slapped her face. The victim was too frightened to leave. When the offender woke in the morning he elbowed her as he got out of bed, then they went to the hotel to retrieve the victim’s belongings. On the way out the victim was able to seek help from the receptionist who hid her from the offender, and police were called. The victim’s victim impact statement described a range of trauma-related impacts of the offending.

Sentence: 40 months and 12 days (three years, four months and 12 days), with a non-parole period of 28 months, approximately 70 per cent of the head sentence.

Mossop J observed:

[44] The circumstances of this case involve a disturbing example of domestic violence. The offender has a criminal history, including previous offences directed to the current victim, that means he is not entitled to leniency. I do not place any significant weight upon the remorse communicated to the author of the pre-sentence report. I accept that statements unsupported by evidence that is able to be tested should be treated with great caution: see *Barbaro v R* [2012] VSCA 288; 226 A Crim R 354 at [38] and *Imbornone v R* [2017] NSWCCA 144 at [57].