

***R v Cowling* [2019] ACTSC 138 (23 May 2019) – Australian Capital Territory Supreme Court**

'Intensive corrections order' – 'Options' – 'Perpetrator interventions' – 'Physical violence and harm' – 'Rehabilitation' – 'Sentencing'

Charges: Unlawful confinement x 1; choking, suffocating or strangling x 1; common assault x 1.

Case type: Conviction and sentence.

Facts: The offender engaged in controlling and violent behaviour towards the victim during their relationship and had threatened to kill her and her family if she ended the relationship. On 1 November 2016, the offender drove himself and the victim home. He did not allow her to exit the vehicle, pulled her hair and punched her in the face several times. On 21 March 2017, the victim visited the offender's residence and an argument ensued. The offender grabbed the victim, pushed her down and squeezed her neck. Later that night, the offender choked the victim for 'about 20 minutes' and threatened to kill her, he intermittently released his hands [7]. On 22 March 2017, the victim fled and called her brother to get her. The offender later attended the brother's residence, and made threats and attempted to drive his vehicle towards the brother. The brother was the victim of the common assault charge.

Issue: The Court determined the appropriate sentence for the offences in the circumstances.

Held: The Court considered the objective circumstances of the offending. The unlawful confinement charge was serious as it involved gratuitous violence against the victim, including punching her in the face. The choking charge was also serious as the victim felt that she could pass out and the conduct was accompanied by threats ([27]-[28]). The offender reported that he attended psychological counselling sessions in the past ([34]). His personal circumstances were also taken into account. His parents separated when he was young, he reported a supportive family environment, he has a four year son with an ex-partner with whom he maintains contact, and he is currently employed. He denied any past or current drug use. Although there was an almost decade-old matter for possession of prohibited drugs, no conviction was recorded ([33]). Further, his criminal history was limited. The Court refused to take into account a current family violence charge against him, as he had not yet been convicted and was entitled to a presumption of innocence ([44]-[45]). The offender's remorse, references provided to the court, time already spent in custody, and sentencing principles, particularly rehabilitation, were also taken into account in determining the appropriate sentence ([38]-[43], [51], [80]-[88]). The Court noted that the offender entered pleas of guilty 11 days prior to when the trial was listed to commence for a second time, and allowed a discount of approximately 15% ([46]-[50]). The offences were found to significantly impact the victim. 'This sort of violence against women must be deterred and must be punished' ([100]).

The Court recorded the convictions for the 3 offences. The sentence imposed was ordered to be served by way of an Intensive Corrections Order (ICO), which highlights the importance of rehabilitation. The ICO was made on the condition that the offender perform 400 hours of community service, continue to engage with psychological services to manage his mental health, and be assessed for and complete offence specific intervention ([114]).