

***Donoso v Koster* [2011] ACTSC 192 (24 November 2011) – Australian Capital Territory Supreme Court**

‘Common assault’ – ‘Hardship’ – ‘Non-conviction order’ – ‘Offender character references’ – ‘Physical violence and harm’ – ‘Recording a conviction’

Charge/s: Common assault.

Appeal type: Appeal against sentence.

Facts: The appellant forcibly pulled sheets from on top of the complainant when she was in bed. The sheets caught on the complainant’s necklace and this caused pain and a red welt on her lower neck. The magistrate recorded a conviction.

Issue/s: A conviction should not have been recorded.

Decision and Reasoning: The appeal was allowed. The prosecution submitted that, as this was a family violence offence, it had a certain degree of seriousness and a conviction ought to be recorded. Burns J accepted that ‘there are circumstances and principles relating to family violence offences which that they must be taken particularly seriously’. However, the objective seriousness of the offence and the subjective circumstances of the offender are always relevant. Objectively, this offence came very close to the bottom of the range of seriousness of offences of this nature. Further, the appellant was otherwise a man of good character. He had no prior convictions and was spoken of highly in provided testimonials. Further, he was employed in an area in which the recording of a conviction would result in particular hardship (i.e. termination of employment). The conviction was set aside and a good behaviour order for a period of 12 months was imposed.