

***R v McLaughlin* [2015] ACTSC 201 (16 July 2015) – Australian Capital Territory Supreme Court**

‘Animal abuse’ – ‘Assault’ – ‘Contravening a protection order’ – ‘Exposing children’ – ‘Moral culpability’ – ‘People affected by substance misuse’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Rehabilitation’ – ‘Sentencing’ – ‘Victim impact statement’

Charges: Common assault, assault occasioning actual bodily harm, contravening a protection order, resisting a public official

Proceeding: Sentencing

Facts: When the offender returned home he tripped after his dogs walked in front of him. In front of his wife (the victim) and children, the offender became angry and started kicking the dogs. After the victim asked him to calm and stop hurting the animals, the offender punched her in the stomach (count 1). Approximately 10 minutes later when they were discussing the punch, the victim said ‘You grew up watching your dad hit your mum and now you think it’s okay to hit me too’. In response, the offender punched her again to the back of her head, causing her to fall to the ground. He then punched her twice more, kicked her in the head five times and stomped on her head. As a result, the victim suffered a large cut to her forehead requiring seven stitches and a bloody nose (count 2). Both children were present during this assault. When the offender was arrested by police he became aggressive, spat at one of the officers (count 3) and resisted the arrest (count 4). Approximately 3 months later a domestic violence order was made against the offender restraining him from engaging in conduct that constitutes domestic violence to the victim, including offensive, harassing or threatening conduct. The offender subsequently had an argument with the victim where he was abusive and threatening towards her (count 5). When someone attempted to intervene, the offender threatened to kick him. At the time this offence took place the offender was on bail for the previous 4 offences.

In relation to this conduct, the offender was charged and pleaded guilty to two counts of common assault (counts 1 and 3), one count of assault occasioning actual bodily harm (count 2), one count of resisting a public official (count 4) and one count of contravening a protection order (count 5).

Issue: What sentence should be imposed.

Decision and reasoning:

In assessing the objective seriousness of the offences, Burns J took into account that the offender was significantly larger than the victim, that the offences occurred in the context of a domestic relationship and that the children were present during the attack. Burns J considered the offender's conduct to be 'cowardly, shameful and rightly characterised as criminal' ([7]). A victim impact statement was also prepared by the victim, explaining the trauma and anxiety the offences caused her and the children. Burns J noted that 'As is so often the case in domestic violence offences, the long term burden of your violence will not only be felt by your wife, but also by your children'.

The offender's childhood was marred by exposure to domestic violence and he 'was disappointed in [his] actions and how [he] exposed [his] children to that type of domestic violence, which [he] despised as a child' ([22]). He had secure employment to return to after being released from custody. The offender had a history of drug and alcohol abuse and mental health issues including suffering from posttraumatic stress disorder. Due to these concerns, he was assessed as being at moderate risk of reoffending. However, Burns J noted that the offender had been attending numerous rehabilitation programs for his alcohol and drug abuse and was receiving treatment for his mental health issues. Expert psychologist reports noted that the offender's behaviour was 'strongly influenced by [his] background of mental health issues arising out of [his] traumatic childhood, particularly [his] ongoing complex post traumatic stress disorder' and that he was unable to make calm or rational choices at the time of offending ([32]).

The offender demonstrated a degree of remorse in his statements to psychologists and his guilty pleas. Therefore, the sentence was reduced by 25 per cent as a result of these early pleas. The offender's mental illness was causally connected to his offending and to his abuse of alcohol. It also impaired his mental functioning at the time of the offences and reduced his moral culpability by impairing his ability to exercise appropriate judgement and make calm and rational choices. Full time imprisonment would have a deleterious effect on his mental health and prospects of rehabilitation. Burns J concluded that the need for general and specific deterrence should be moderate in light of the offender's reduced culpability as a result of his mental illness.

Burns J convicted and sentenced the offender to:

- > Count 2: Nine months' imprisonment to be served by way of periodic detention;
- > Count 5: Three months' imprisonment concurrent with the sentence for count 2, suspended after 13 days on the condition of complying with a good behaviour order for 18 months;
- > Count 1: Good behaviour order for a period of nine months;
- > Count 3: Fine of \$600.00; and
- > Count 4: Good behaviour order for three months.