

***R v NQ* [2015] ACTSC 308 (14 October 2015) – Australian Capital Territory Supreme Court**

‘Act of indecency without consent’ – ‘Assault with intent to engage in sexual intercourse’ – ‘Deterrence’ – ‘Drug and alcohol programs’ – ‘Emotional and psychological abuse’ – ‘Exposing children’ – ‘People affected by substance misuse’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Sexual and reproductive abuse’

Charge/s: Act of indecency without consent, assault with intent to engage in sexual intercourse.

Hearing: Sentencing hearing.

Facts: The male offender and the female complainant were married. They had been in a relationship for 17 years and had 3 children. The offender and the complainant had been drinking alcohol together when the offender requested oral sex. The complainant declined and went to bed. Five minutes later the offender walked into the bedroom and demanded the complainant perform oral sex on him. She refused repeatedly and started crying. The offender said, ‘Do you think your crying is going to get you what you want? It’s your job to do it’. He then took all his clothes off and positioned himself on top of the complainant. She pushed the offender off but he continued to talk angrily. The offender then dragged the complainant across the bed and pushed her head close to his penis. He tried to slap her twice but was blocked by the complainant. She fell off the bed, hurting her head. The offender continued to demand oral sex. He pinned her down on the bed and yelled, ‘You need to suck me off, it’s not about love or intimacy’. The complainant, crying, pleaded for him to let her go and the offender replied ‘What can you do about it?’ The offender then became upset and the complainant called the police.

Decision and Reasoning: These offences were objectively serious. The assault lasted almost an hour and included physical and mental abuse. Robinson AJ noted, *‘I take into account the fact that prior sexual relationship is relevant in assessing the seriousness of sexual assault. Here it is not a sexual assault by an unknown stranger which would give rise to extreme terror in the mind of the complainant’* (See [8]). His Honour also took into account a number of subjective circumstances. There had been some measure of reconciliation between the offender and the complainant. While these events were not an isolated incident of abuse and this mitigated the leniency that could otherwise have been shown in this case, the offender had taken opportunities to assist himself and took responsibility for his offending (See [9]-[14]).

In sum, His Honour noted: *'I have come to the view that only a sentence of imprisonment is appropriate to the level of offending in this case. There is a need to punish this offending and to send a clear message by way of general deterrence to others that participation in sexual behaviour is a matter of choice not subjugation. I have also determined to deal with the offending as if it were only one transaction and impose concurrent sentences'* at [15]. The offender was sentenced to one year and nine months on the charge of unlawful assault and seven months imprisonment for an act of indecency. These sentences were wholly suspended upon the offender entering a good behaviour order for three years.