

***Fallon v Baker* [2018] ACTSC 319 (9 November 2018) – Australian Capital Territory Supreme Court**

‘History of abuse’ – ‘People affected by substance misuse’ – ‘Physical violence and harm’ – ‘Women’

Charge: Common assault.

Appeal type: Appeal against conviction.

Facts: The appellant had a history of heavy drinking. Despite having been prescribed medication to assist with his alcohol dependence, the appellant was heavily intoxicated on the night the offence occurred. His intoxicated state led him to punch his wife in the back on at least four occasions while she was pretending to sleep and to later threaten to strangle their youngest child to stop him crying. This threat prompted the mother to call the police.

In the magistrate’s judgment, he noted that the wife declined to participate in the Family Violence Evidence-in-Chief interview as she did not want the appellant to know she was the one who had contacted the police. The wife declined out of fear of losing the children due to the husband’s past behaviour and conduct in the relationship. The magistrate attributed the appellant’s behaviour to his dependence on alcohol.

Along with appealing the magistrate’s sentence, the appellant also sought to admit further evidence and to have the sentencing proceedings reopened.

Issues: (1) Was the sentence imposed manifestly excessive; and (2) did the magistrate fail to consider or give proper weight to the subjective circumstances of the appellant; (3) should further evidence be admitted and the sentencing proceedings reopened.

Decision and reasoning: Mossop J dismissed the appeal and confirmed the sentence imposed by the magistrate. His Honour was satisfied that the magistrate considered all possible consequences of a conviction for the appellant’s employment and other subjective circumstances and that the appellant’s submissions failed to demonstrate otherwise. As such, the appellant’s first ground for appeal was unsuccessful.

When considering the second ground, Mossop J used the wife’s fear of making a complaint and of losing her children, and the history of similar events during the relationship as evidence ‘that the offending conduct in the present case occurred in a context of typical domestic violence cases ...[This] history of conduct within the relationship indicates that the offending conduct had a more objectively serious character than it would have had if that history was not present’ [21]. Mossop J used these facts to reject the appellant’s claim that the magistrate’s sentence was manifestly excessive.

In relation to the third issue, the appellant sought to admit evidence detailing the consequences of the conviction on his employment and job prospects given that the conviction caused his employer to consider terminating the appellant's employment and the appellant to consequently resign. Mossop J, however, did not consider the admission of further evidence to be in the interests of justice as the evidence was of limited scope and addressed a matter already considered by the magistrate.