

***R v MZ* [2019] ACTSC 341 (6 December 2019) – Australian Capital Territory Supreme Court**

‘Exposing children’ – ‘Monitoring’ – ‘People with mental illness’ – ‘Sexual violence’

Charges: Sexual intercourse without consent x1; Administration of certain declared substances x1.

Proceedings: Sentencing

Issue: Appropriate sentence

Facts: The complainant woman and male offender were married and lived together. The offender engaged in sexual intercourse with the complainant while she was asleep. An audio recording taken during the time reveals that the complainant did not consent to the offender’s conduct and that when she woke up she immediately asked the offender to stop. The offender then left the bedroom, only to return ten minutes later and force a bitter substance into the complainant’s mouth. The substances administered were temazepam and zopiclone.

Judgment: In determining the objective seriousness of the offence, Mossop J noted that "while the offending did occur in a domestic context, the evidence did not establish that it was part of any pattern of oppression of the victim through violence or sexual violence. Nor does it establish that there was any marked inequality of power between husband and wife." [9]. The judge found the offending to also lack other aggravating factors as the offender did not use a weapon or violence, threaten the victim, or have a significant degree of premeditation and the victim was not injured, humiliated or degraded in a way more explicit than the conduct itself [7]. Justice Mossop also did not consider the presence of the sleeping child to be an aggravating factor as the child had no awareness of what was going on. The Court accepted that the offender’s depression and general anxiety disorder meant that "he is likely to find a sentence of full-time imprisonment more onerous than a person without those conditions" [40]. The sexual intercourse offending was held to be in the lower range of objective seriousness for this offence [10]. It was not possible to find on the evidence that the administration of a declared substance offence "was an intention to cause harm to the victim other than through interference with her recollection of events".

The offender was sentenced to 22 months’ imprisonment for the first charge, with the sentence to be suspended after four months upon the offender entering into an undertaking to comply with good behaviour obligations for 19 months. For the charge of administering a declared substance, the offender was convicted and sentenced to a suspended sentence of two months’ imprisonment.