

## ***R v Tonna (No 1)* [2020] ACTSC 360 (2 October 2020) – Australian Capital Territory Supreme Court**

‘Aggravated burglary’ – ‘Assault occasioning actual bodily harm’ – ‘Breach of protection order’ – ‘Damaging property’ – ‘Driving whilst disqualified, repeat offender’ – ‘Plea of guilty’ – ‘Separation’ – ‘Weapons and threats to kill’

Charges: Aggravated burglary; Assault occasioning actual bodily harm; Possessing a drug of dependence; Driving whilst disqualified from obtaining or holding a driver licence as a repeat offender; Contravening a Family Violence Order committed on three occasions x 2.

Proceedings: Sentencing.

Facts: Mr Tonna was in an intimate relationship with the female victim of the assault for about four years, before it ended in mid-2019. Mr Tonna breached Family Violence Order (FVO) made for the protection of the victim by attending her residence twice while she was sleeping, accusing her of having a man in the room and damaging property. Mr Tonna subsequently hit the victim with his car, causing injuries. Separately, Mr Tonna also broke into a block of units and was in possession of methylamphetamine. He pleaded guilty.

Decision and reasoning: A total sentence of 2 years and 4 months imprisonment was imposed.

The breaches of the Family Violence Order were serious. Refshauge J said at [26]-[27]:

“The reported comment made by Mr Tonna when attacking the victim’s window on 23 July 2019, namely accusing her of having a man in her room, apart from being none of his business, does show he had not accepted the end of the relationship. Difficult though that may be, it is something that he has to confront and acknowledge.

“It should be noted that the actions on that morning also constituted at least three separate approaches to the victim though relatively close together in time, at 6 am, 7:10 am and 7:30 am. Each could have constituted a separate offence. While not formally described in these proceedings as a rolled-up plea, it is appropriate to treat them in this way. I have described that approach in *R v John* [2017] ACTSC 144 at [106]- [107] and will follow what I there said.”

The assault, a violence offence, was also serious. Refshauge J said at [28]-[29]:

“It was, in the circumstances, in the nature of a family violence offence. It is the duty of courts to denounce such offences. It also shows an exercise by Mr Tonna of power which is, in reality, an abuse of power, an abuse that is often exacerbated by the vulnerability of women. The assault is an example of escalation and the use of the car, which can properly be described in this situation as a weapon, a potentially lethal weapon. Thus, such offending can escalate and lead, as family violence offences often do, to the death of the victim.

“Further, a victim who, as in this case, is on the ground is in a vulnerable situation ( *R v Hodge* [2015] ACTSC 214 at [15]). The victim must have been terrified as her Victim Impact Statement shows. These are serious offences as explained in decisions such as:

*Roberts v Smorhun* at [120]-[127] and *Goundar v Goddard* [2010] ACTSC 56 at [32]- [36]. In relation to the assaults in the context of family violence, see *R v Stanley* [2015] ACTSC 322 at [65]-[66].”