

***R v Rappel* [2017] ACTSC 38 (24 February 2017) – Australian Capital Territory Supreme Court**

*Note: this case was decided under now superseded legislation however the case contains relevant statements of principle.

‘Contravention of a protection order’ – ‘Exposing children to domestic and family violence’ – ‘Murder’ – ‘People affected by substance misuse’ – ‘Sentencing’ – ‘Women as a vulnerable group’

Charges: Murder x 1; Recklessly inflicting grievous bodily harm x 1; Assault occasioning actual bodily harm x 1; Contravene protection order.

Case type: Sentence.

Facts: The defendant and the deceased had formerly been in a domestic relationship and had a child together ([9]). The deceased had taken out a domestic violence order (DVO) against the defendant the day before the defendant killed her ([17]-[19]). When the defendant received the order, he bought an axe, drove to the deceased house and cut her neck with the axe, severing her spine. She was holding his newborn child at the time, and her two sons were in the same room ([33]-[36]). The axe severed her sister’s finger, which formed the basis of the grievous bodily harm charge. He then assaulted her brother, which formed the basis of the assault occasioning bodily harm charge ([37]-[39]).

Issues: Sentence to be imposed. The defendant raised the mitigating factor of diminished responsibility.

Decision and Reasoning: Burns J described the objective circumstances of the murder ‘within the worst category of cases of murder, and would warrant a term of life imprisonment’ [133].

Burns J said at [131] ‘For many years now, the courts of this country have spoken of the need to protect members of the community, and particularly women, from domestic violence, and the need for courts to take seriously offences of domestic violence. If these statements are to have meaning, if the protection offered by the [Domestic Violence and Protection Orders Act 2008 (ACT)] is to have significance, it is incumbent on courts to recognise the heinousness of offences of violence committed in retribution for a member of the community invoking the protection provided by the Act.’

His Honour took into account as mitigating factors the defendant’s plea of guilty, his experience of abuse as a child, and his long history of mental health issues ([103]). Other contributing factors included his use of anabolic steroids, methylamphetamines and a personality disorder, but his Honour did not place significant weight on these circumstances ([120]). His Honour also had regard to victim impact statements tendered by the deceased’s family ([124]-[128]). His Honour concluded (at [151]):

'The present offence of murder was vicious and cowardly. Those who witnessed your violence will have to live with their memories for the rest of their lives. Your actions deprived three children of their mother, including your own infant daughter Ayla. You have effectively deprived Ayla of both of her parents. The effects of your actions will be felt for decades to come. There is a very substantial community interest in retribution, deterrence and punishment. This can only be achieved by a very substantial period of imprisonment.'

His Honour imposed a sentence of 32 years and 2 months' imprisonment.

Note: the Domestic Violence and Protection Orders Act 2008 (ACT) referenced in this decision has been repealed and replaced by the Family Violence Act 2016 (ACT).