

***R v Laipato* [2019] ACTSC 386 (20 December 2019) – Australian Capital Territory Supreme Court**

‘Burglary’ – ‘Children’ – ‘Controlling behaviour’ – ‘Extensive criminal history’ – ‘Lack of remorse’ – ‘Non-fatal strangulation’ – ‘People affected by substance misuse’ – ‘Persons with mental illness’ – ‘Poor prospects of rehabilitation’ – ‘Sentence’ – ‘Separation’ – ‘Threat to kill’ – ‘Unlawful confinement’

Charges: Burglary x 1; Unlawful confinement x 1; Unlawfully choking, suffocating or strangling a person x 1

Case type: Sentence

Facts: The male offender was found guilty by a jury of burglary, unlawful confinement and unlawfully choking, suffocating or strangling a person. He was acquitted of 6 other charges. The offender and female victim (his former partner) were engaged in SMS text conversation about their relationship in the hours leading to the offending conduct. The victim made it clear that the relationship was over, and the offender was angry as a result of this conversation ([4]). The offender attended the victim’s home after midnight, dragged her from her bed into the neighbouring room and choked her ([5]). The offence was accompanied by a death threat, calculated to increase the victim’s fear. The offender and victim had been in an intermittent relationship since 2012, and have a 4-year old son. In her Victim Impact Statement, the victim explained the impact of the domestic violence. She suffers severe anxiety, PTSD and depression, and sometimes "feels very angry that her former partner hurt her so much, both physically and emotionally". At the time of the offending conduct, she felt helpless, fearful and thought that she might die ([6]-[7]).

Held: The offender was sentenced to 5 years’ and 5 months’ imprisonment, with a non-parole period of 3 years and 6 months. The offender has a very lengthy criminal history, including multiple convictions for burglary, assault occasioning actual bodily harm, aggravated burglary, recklessly inflicting grievous bodily harm, assault and drug and traffic offences ([8]). A significant aggravating feature of the offences was that they occurred in a family violence context ([9]). The unlawful confinement lasted for a minimum of 1.5 hours, and this was "impulsive and without any significant planning". The purpose of the confinement was to manifest his anger towards the victim for ending the relationship and to exercise control over her. During the course of the confinement, the offender inflicted extreme violence on, and instilled fear in, the victim, who now suffers continuing psychological consequences ([10]). The choking conduct was deliberate and sustained, and the victim’s ability to breathe was sometimes completely impaired ([11]).

Although the offender's childhood was marred by instability, he now enjoys a supportive family relationship ([13]). In a pre-sentence report, the offender indicated that he had no intention to reunite with the victim and claimed to have been subjected to violence in the relationship ([14]). He also has a long history of alcohol and drug use, as well as Major Depressive Disorder, which was described as in full remission in 2017. He was also assaulted while in custody that same year. He plans to reunite with his son, with whom he is believed to have a "healthy, loving relationship" ([17]-[20]).

The offender has also shown no remorse for his current and previous offending. This gave rise to a concern regarding his ability and commitment to avoid criminal offending and to achieve a stable, co-parenting relationship with the victim. During his present period in custody, he did not take any steps to address his drug and alcohol abuse issues or his attitude to domestic violence. Therefore, his prospects of rehabilitation could not be described as good ([21]-[23]).