

***R v KD* [2019] ACTSC 62 (15 March 2019) – Australian Capital Territory Supreme Court**

‘Children’ – ‘Factors affecting risk’ – ‘People affected by substance misuse’ – ‘Physical violence and harm’ – ‘Sexual and reproductive abuse’ – ‘Suffocation’

Charges: Attempted sexual intercourse without consent x 1.

Case type: Sentence.

Facts: The accused pleaded guilty to an offence of attempted sexual intercourse without consent. The accused and the victim lived together for two years prior to the accused entering custody, and had a child together ([21]-[22]). The victim was lying on her back when the accused pinned her down and repeatedly placed a pillow over her face. He then attempted to have non-consensual sexual intercourse with her ([4]).

Issues: The Court determined the appropriate sentence for the offence in the circumstances.

Decision and reasoning: Loukas-Karlsson J found that the offence approached mid-range seriousness. The objective seriousness of the offence was informed by the fact that the accused pinned down the victim and repeatedly placed a pillow over her face ([15]-[17]). His Honour considered the accused’s personal circumstances at [18]-[28]. He was young (24 years old), had been diagnosed with PTSD at the age of five as a result of witnessing domestic violence between his parents, reported to have been sexually abused by a family member, left high school early, worked in hospitality and as a removalist, and used drugs from an early age. The accused accepted responsibility for the offence and acknowledged the negative impacts of his actions. He indicated that he was willing to participate in programs and interventions. In considering the objective seriousness of the offence and subjective matters, his Honour held that the appropriate sentence for the offence of attempted sexual intercourse without consent is two years and nine months imprisonment. However, his Honour reduced the sentence to two years and four months due to the guilty plea.