

***Morrison v Maher (No 2)* [2022] ACTSC 63 (1 April 2022) – Australian Capital Territory Supreme Court**

‘Character evidence’ – ‘Children’ – ‘Choking’ – ‘Coercive control’ – ‘Following, harassing monitoring’ – ‘Image abuse’ – ‘No prior convictions’ – ‘People with mental illness’ – ‘Property damage’ – ‘Protection order’ – ‘Re-sentence following appeal’ – ‘Sentencing’ – ‘Stalking’ – ‘Systems abuse’ – ‘Technology-facilitated abuse’ – ‘Totality’ – ‘Weapon’

Charges: Assault occasioning actual bodily harm x 5; Property damage; Possess offensive weapon with intent; choking (common assault x 2; Non-consensual sharing of explicit images; Trespass x 2; Property damage; Contravention of a Family Violence Order x 7; Aggravated stalking; Attempt to pervert the course of justice x 2; Stalking x 3; Attempt to contravene a Family Violence Order; Use of a carriage service to harass.

Proceedings: Re-sentence following appeal.

Facts: The male offender was 43 years old with no prior criminal history. The offending against his wife spanned nearly 10 years and included multiple offences on numerous occasions. The complaints came to light when the victim separated from the offender and sought a Family Violence Protection Order. The offender subsequently repeatedly breached the Family Violence Order, including whilst in custody.

The offender had a traumatic childhood and was diagnosed with Bipolar Disorder, Attachment Disorder and Complex Post-Traumatic Stress Disorder. He and his former wife married in 2000 and had two children. He successfully appealed his original sentence of a total period of imprisonment of nine years and eight months, with a non-parole period of five years and eight months in *Morrison v Maher* [2021] ACTSC 312 (8 December 2021) on the basis of conceded errors of reasoning in the original sentencing decision (*Maher v Morrison* [2020] ACTMC 26 (17 December 2020)).

Decision and reasoning:

1. Appeal allowed.
2. Charge CC2019/6240 is amended by deleting “between 24 March 2019 and 26 April 2019” and inserting “on or about 20 May 2019”.
3. An aggregate sentence of imprisonment is nine years, four months and 26 days imposed, with a non-parole period to equivalent of 60 per cent of the total effective sentence. As the appellant did not wish the matter to be remitted to the Magistrates’ Court for resentence Mossop J was unable to consider new evidence the appellant sought to adduce, noting that the appellant’s statement and evidence before the first instance court sought to shift a degree of responsibility for his offending to the victim and the controlling nature of the offending meant such behaviours indicated likely entrenched attitudes, making it

difficult to assess his prospects of rehabilitation [117].

Mossop J observed at [105]:

The offending involves serious domestic violence offending. It is offending directed to the maintenance of control over the victim. It occurred in the context of a relationship where physical and emotional tools were used to maintain that control. It occurred in the victim's home. Some of the offences directly involved the children. Others indirectly involved the children through the creation of a climate of fear. The assessment of the objective seriousness of the offending must be made with due regard to that context.