

***R v EP (No 3)* [2019] ACTSC 242 (28 August 2019) – Australian Capital Territory Supreme Court**

‘People with mental illness’ – ‘Sentencing’ – ‘Sexual and reproductive abuse’ – ‘Social abuse’

Charges: 1 x threaten to capture or distribute intimate images; 1 x use of a carriage service to menace, harass or cause offence; 2 x indecency; 1 x sexual assault; 1 x common assault; 1 x stalking

Case type: Sentencing

Facts: The offender and victim were in a de facto relationship for approximately 6 years and have a daughter. Despite the breakdown of their relationship, they remained on amicable terms ([7]). The offender was charged with a combination of Federal and Territory offences. The offender pleaded guilty to threatening to distribute an intimate image (Count 5) and using a carriage service to menace, harass or cause offence (Count 6). He was found guilty of 2 charges of committing an act of indecency (Counts 2 and 4) and a charge of sexual assault in the third degree (Count 3). A charge of common assault and stalking were transferred to the Court, which required consideration of the provisions on back-up and related offences in the Supreme Court Act 1933 (ACT) ([13]).

Issue: The issue for the Court was to determine the appropriate sentence for the offences.

Held: The Court sentenced the offender to 3 years’ imprisonment with a non-parole period of 18 months for the Territory offences, and declined to make a recognizance release order with respect to the Federal offence as the offender would still be serving a period of imprisonment for the Territory offences after the expiration of that offence. The charge of common assault was dismissed.

The offender’s subjective circumstances were observed at [32]-[40]. He had 2 daughters from a previous marriage and worked as a self-employed technician prior to custody. However, he had not been working for the past 6 months due to mental health issues, and suffered financial distress as a result ([35]). The offender reported infrequent social use of cannabis and his self-reported alcohol use was deemed ‘risky’ ([36]). The offender showed some insight into the impact of his offending, but attempted to minimise and justify some of his actions ([39]). The offender was also being treated for symptoms of depression ([40]).

The Court did not attribute significant weight to the offender's expression of remorse ([41]-[44]). He had no relevant criminal history and was of prior good character ([45]-[46]). He pleaded guilty to 2 charges before the trial commenced, and the 2 further transfer charges in the course of the sentencing hearing. Accordingly, the Court allowed a discount of approximately 10% in each case ([47]-[54]). The Court also considered the time spent in custody ([55]-[56]), and analysed relevant cases and statistics ([57]-[69]). At [89], the Court found that all the offences committed against the victim significantly impacted her. The Court also took into account the principles of totality, concurrency and accumulation ([70]-[78]), and relevant statutory considerations ([79]-[88]). Significantly, it was noted at [88] that the 'Courts have made it clear that women must not be treated by men as property'.