

***AK v Regina* [2020] NSWCCA 194 (5 August 2020) – New South Wales Court of Criminal Appeal**

‘Application for leave to appeal against sentence’ – ‘People affected by mental illness’ – ‘Sexual violence’ – ‘Step-child in the family’ – ‘Suicide threat’ – ‘Threat to kill child’

Charges: Detained wife with the intent to obtain an advantage (psychological gratification) x 1; Detained stepchild with the intent to obtain an advantage (psychological gratification) x 1; Doing an act intending to influence a witness to withhold evidence/procure an acquittal x 1; Sexual intercourse without consent x 1; Contravention of a protection order x 1; Common assault x 2; Intimidation/Stalking x 1.

Proceedings: Application for leave to appeal against sentence.

Facts: The male applicant entered his wife’s home premises in contravention of a protection order, intending to intimidate her. The wife returned home with her child, PC, and was scared when she saw the appellant. She yelled to PC to open the door and the appellant told PC that if she opened the door of the room, he would kill PC. Over a number of hours, the applicant spoke with his wife about an impending court case and threatened to kill himself if she called the police. The wife told the applicant she would ‘say whatever the offender wanted her to say in court’. The applicant detained his wife locked in a bedroom for approximately two hours during which time the applicant said, ‘I’m sorry I hit you, I love you’ and then had sexual intercourse with the victim without her consent. The applicant told the victim he had sent his brother \$3000, so that if anything happened to the offender, his brother would kill her and he re-iterated his threat that if she called the police he would commit suicide.

Ground: (1) The sentencing judge erred by failing to properly consider the mental health of the applicant.

Decision and reasoning: *Application for leave to appeal granted. Appeal dismissed.*

No error has been demonstrated. Ground 1 dismissed.

The sentencing judge made specific reference to the context of domestic violence citing the High Court in *Munda v Western Australia* [2013] HCA 38 at [54]-[55]:

‘the longstanding obligation of the of the state to vindicate the dignity of each victim of violence, to express the community’s disapproval of that offending, and to afford such protection as can be afforded by the state to the vulnerable against repetition of violence’.

Reference was also made to *The Queen v Kilic* [2016] HCA 48, recognising the:

‘societal shift in relation to domestic violence and that current sentencing practices for offences involving domestic violence depart from past sentencing practices for this category offence, because of changes in societal attitudes to domestic relations’ [15].

Aggravating factors included the actual or threatened use of violence, the presence of children, the commission of offences in the home of the victim, ‘a place where they are entitled to expect to be safe and free from this type of conduct’, and the breach of bail and a protection order [16]. The sentencing judge took into account medical reports that indicated that the offender’s mental condition may have ‘contributed to the commission of the offending in a material way’. The sentencing judge weighed up the relevant factors on the evidence before him, including:

[40] ...a background of repeated, violent offending, where an AVO and bail conditions in place seem to have made no difference to this offender’s willingness to attack, detain, humiliate, terrorise and rape his partner in the presence of her children.