

***R v Phillip Michael Summerfield* [2019] NSWDC 126 (16 April 2019) – New South Wales District Court**

‘Bail’ – ‘Following, harassing and monitoring’ – ‘People affected by substance misuse’ – ‘People with mental illness’ – ‘Perpetrator interventions’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Sexual and reproductive abuse’

Charges: The offender pleaded guilty to 3 charges, namely, stalking or intimidation with intent to cause fear of physical or mental harm (Count 1), assault occasioning actual bodily harm (Count 2), and sexual intercourse without consent (Count 3). There was also a charge of driving while suspended.

Case type: Sentencing.

Facts: The victim had been in an intimate domestic relationship with the offender for approximately 2 years, during which time the offender sometimes lived at the victim’s home. The relationship was characterised by violence. On 10 May 2017, the offender carried out the attack after picking the victim up from her home. He began shouting at the victim about a man named Adam. The victim tried to escape from the car. The offender stopped the car, opened the passenger’s door and punched the victim several times in the face, causing bleeding (Count 2). The victim moved to the back seat of the car and called 000 on 3 separate occasions in the hope that the operator would hear what was happening. The offender drove to an address in Young, where he committed Count 3. Count 1 related to the offender’s ongoing threatening and violent behaviour towards the victim. The offender later drove the victim to her home, and apologised to her. When he was arrested, he agreed to be interviewed and admitted to assaulting the victim.

The offender asked the Court to also deal with his appeal against sentence severity in relation to an aggregate sentence of 26 months with a non-parole period of 15 months which had been imposed at the Local Court in respect of two offences (one of which was contravention of a domestic violence order). That offending was committed while the offender was on bail for the other offences for which the offender appeared for sentence.

Issue: The Court determined the appropriate sentence for the offences in the circumstances.

Held:

Severity appeal from the Local Court:

His Honour dismissed the appeal, and confirmed the convictions and the aggregate sentence of 26 months with a non-parole period of 15 months.

Sentence matters:

Judge Lerve noted that the offending was committed in contravention of an apprehended domestic violence order, and highlighted the need for general deterrence in such cases ([35]-[42]). The circumstances in which Count 2 was committed were relevant to the assessment. It was particularly nasty and cowardly as it occurred on the side of the road; however the injuries were limited to bleeding ([19]). Count 1 was found to be serious, as it involved an ongoing course of violent and aggressive threats ([20]). In relation to Count 3, his Honour noted that, in light of the victim's reaction and the violence which occurred that day, it must have been obvious to the offender that the victim was not consenting ([21]).

Further, the offender's criminal history was extensive, and he had previously been convicted of offences including contraventions of domestic violence orders, intimidation of a police officer, damage to property, and a number of assault matters. However, the offender had not previously been charged with a sexual offence ([43]-[48]). He also regularly uses drugs, and self-reported that he was diagnosed with PTSD and experienced trauma as a child. He attended a rehabilitation facility while on bail in 2018, but was discharged because of non-compliance with the requirements of the facility ([54]). Judge Lerve could not be satisfied on balance that the offender had good prospects of rehabilitation ([58]). The evidence before his Honour suggested that, given his lack of treatment, he is at an increased risk of violent re-offending in the future ([57]).

His Honour recorded a conviction for each of the matters to which the offender pleaded guilty, and imposed an aggregate sentence of 7 years and 4 months with a non-parole period of 5 years. He also recommended that the offender participate in the Violent Offenders Treatment Programme while in custody. The total effective sentence was one of 8 years and 4 months with a period of 6 years in actual custody.