

***R v Aumash* [2020] NSWDC 168 (1 May 2020) – New South Wales District Court**

‘Controlling and obsessive behaviour’ – ‘People with mental illness’ – ‘Relevance of covid-19 to sentencing’ – ‘Sentencing’ – ‘Separation -stalking’ – ‘Substance abuse’ – ‘Threats to kill’

Offences: Entering dwelling-house (aggravated offence) x 2; Using a carriage service to menace, harass or cause offence

Proceedings: Sentencing

Facts: The male offender had been in a relationship with the female victim (who had a child from a previous relationship). The victim ended the relationship after a year due to the offender’s controlling behaviour and anger, but the offender refused to accept that the relationship was over. He continued to contact the victim via telephone and text message (the messages were abusive, controlling and threatening) and attended her home uninvited. One night, the offender repeatedly called the victim and demanded to know who was in her home, threatening to kill anyone who was there. He then went to her house and entered it without her permission. The victim threatened to call police so the offender left the house, but remained outside yelling at her and knocking on doors and windows. He then climbed in through her bedroom window and confronted the victim, standing over her and frightening her (first Entering dwelling house offence). The offender threatened to stab the victim’s male friend and searched the victim’s house. He then picked up a pocket-knife and accused the victim of trying to stab him with it. The victim tried to leave the house and the offender stopped her, but she was ultimately able to get away. The offender followed her into the street and continued to yell at her, despite the victim telling the offender that they were no longer together. The victim ran away and hid in a nearby park, and had a friend call 000. The offender searched for her using the victim’s car but when police arrived, they were unable to find him. An Interim Apprehend Violence Order was obtained by police.

The next day, the victim and her friend, Mick, were in the victim’s backyard when the offender came out of the garage carrying a piece of wood. He took the victim to her car (where he left it the night before) and she drove it home. The offender remained at the victim’s home but the victim would not let him inside. Later that day, the victim found the offender in her kitchen. The offender left after the victim threatened to call police, but he continued to send her text messages. That afternoon, the victim found the offender under her son’s bed (second Entering dwelling house offence). She locked him in the room and ran to her car, but the offender jumped out the window and entered the car and would not leave. The victim continuously sounded the car horn and police arrived.

The offender continued to return to the victim's house over the next few days, threatening to hurt her and her family, and yelling abuse at the victim and anyone she was with. He also continued to send her text messages and make phone calls to her. During the course of one day, the offender made 488 calls to the victim and sent 98 text messages. Many of these messages sought to cajole her into dropping the charges against him and excusing his criminal actions towards her. The police eventually found the offender at the victim's home, served him with an Apprehended Violence Order and arrested him.

Sentence: The judge sentenced the offender to three years and three months' imprisonment for the Entering a dwelling-house offences, with a non-parole period of two years, and nine months' imprisonment for the Using a carriage service offence. The judge emphasised that the offender's conduct constituted a "sustained attack on [the victim's] physical and psychological integrity over a period of weeks" [54] and that "his crimes were so serious he must be removed from the community for a time" [62]. His Honour found that the offender had no concern for the victim's emotional state and sought to exercise coercive control over her by putting her in fear [31].

When determining the appropriate sentence for each offence, His Honour also took into account other offences that the offender committed. Regarding the offender's entry into the victim's bedroom via the window when he knew the victim would be home, His Honour took into account the offender's crime of intimidation, taking of the victim's car, and two entries to the victim's property without her consent [36]. Regarding the offender being found under the victim's son's bed, His Honour also took into account the offender's three acts of intimidation, entry to the victim's property without her consent and remaining on her property without her consent [37].

His Honour specifically noted that the number and content of the calls and text messages showed that the offender's intention was to seek to control, threaten and demean the victim, and this was part of a pattern of behaviour [33]. His Honour stated that "the extent of [the offender's] harassment and motivations for his actions make this a particularly serious example of this type of offence [the Using a carriage service offence]" and therefore a custodial sentence was required [34].

His Honour found that the offender had committed previous domestic violence offences, so was not entitled to any leniency [43]. Although the offender had a history of drug use and mental illness, His Honour held that neither of these mitigated his offending [47]. However, each sentence was reduced to reflect utilitarian value of the offender's early pleas.

His Honour also commented on the COVID-19 pandemic, holding that "these concerns and considerations [regarding COVID-19 and its restrictions] apply to every prisoner sentenced" [52]. His Honour considered that "if/when COVID-19 enters gaols, early parole may be given to some but not all prisoners" and that the offender is in a category that can be considered for early release [53].