

R v AK [2019] NSWDC 456 (19 June 2019) – New South Wales District Court

‘Detention’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Protection order’ – ‘Sexual and reproductive abuse’ – ‘Social abuse’

Charges: 2 x detain a person with the intent of obtaining an advantage; 1 x sexual assault; 1 x influencing witness; 2 x common assault; 1 x stalking/intimidating with intent to cause fear of physical or mental harm; 1 x contravening Apprehended Domestic Violence Order (ADVO)

Case type: Sentencing

Facts: The victim and offender were married and had a child who was 2 years old at the time of the offending. The victim had 2 children from a previous marriage, who were 20 and 15 years of age. The offender pleaded guilty to the charges of detaining his wife and his 15 year old stepdaughter without her consent, with the intention of obtaining an advantage (that is, psychological gratification), and the charge of sexual intercourse with his wife without her consent. He also pleaded guilty to the charge of communicating with his wife, who was to be called as a witness, to persuade her to withhold true evidence with the intent of procuring his acquittal of the assault occasioning actual bodily harm. In addition, the offender also requested that the Court sentence him in respect to the charges of common assault, stalking/intimidating with the intent to cause fear of physical harm, and contravening an ADVO.

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

Held: The Court imposed an aggregate sentence of 10 years’ imprisonment with a non-parole period of 7 years. In relation to the objective seriousness of the detention charges, it was submitted that the Court should consider a number of factors, such as the persons being detained, the period of detention, the circumstances of detention, and the purpose of the detention ([41]). The detainees included his wife, and her 15 year old daughter and 2 year old son. The detention lasted around 10 hours. As part of the detention, there were acts of violence perpetrated against his wife and step-daughter. His wife was also intimidated into changing her story before going to court. Additionally, the offender had sexual intercourse with his wife without her consent while she was being detained ([43]). The purpose of the detention was difficult to ascertain as the offender refused to give evidence on the question. Therefore, the Court could merely speculate ([45]).

Wilson SC DCJ analysed the offender's medical history. In 2016, he had been diagnosed with a neurocognitive disorder with possibilities of a dementia type illness with psychotic symptoms. Another expert opined that the offender likely suffered from major depression at the time of the offending ([56]-60).

Aggravating factors affecting the sentence included ([61]):

- > The actual or threatened use of violence;
- > The offences were committed in the presence of his wife's children, aged 2 and 15 respectively. The 15 year old child was also assaulted, and that offending occurred in the presence of the 2 year old child;
- > The offending was committed in the victims' home, a place where they are entitled to expect to be safe, particularly in light of the fact that an ADVO had been taken out which prevented the offender from attending the premises; and
- > The offences were committed while the offender was the subject of conditional liberty.

The offender's prior criminal history did not aggravate the objective seriousness of the offences, however, it did disentitle him to any leniency resulting from a finding of good character ([65]). His Honour declined to find statutory remorse as a mitigating factor ([66]).