

***R v Brisbane (a pseudonym)* [2019] NSWDC 785 (12 December 2019) – New South Wales District Court**

‘Domestic violence’ – ‘People affected by substance misuse’ – ‘Poor prospects of rehabilitation’ – ‘Sentence’ – ‘Sexual and reproductive abuse’

Charges: 1 x sexual intercourse without consent; 1 x general offence of perverting the course of justice; 1 x contravention of an apprehended violence order (AVO)

Case type: Sentencing

Facts: The offender was in a domestic relationship with the female victim for 3 years, during the course of which the victim had a child. The relationship was marred by domestic abuse, which eventually led to its termination ([7]-[10]). The offender attended the victim’s house in breach of his bail, told her that she would be raped, and proceeded to have non-consensual intercourse with her ([13]-[20]). The offender also attempted to get the victim to withdraw her cooperation with police, which constituted the breach of the AVO and the pervert course of justice offences ([25]).

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

Held: The offender was sentenced to an aggregate term of imprisonment of 7 years, with a non-parole period of 5 years and 3 months ([47]). The sexual assault offence was aggravated because it occurred in the victim’s home, was committed while the offender was on conditional liberty, and involved threats and the use of actual violence ([27]). The Court addressed the offender’s personal circumstances at [30]-[34]: he was 28 years old, had a criminal history, and used various drugs for a long period of time. His Honour described the offender as a ‘vicious’ sex offender ([32]). Although the offender pleaded guilty, he did not express remorse ([35]-[37]). The material before his Honour did not indicate that the offender was interested in rehabilitation, and thus his prospects were found to be poor ([38]). Further, specific and general deterrence, and the need for community protection were highly relevant ([39]).