

## ***State of NSW v Monteiro (Final)* [2020] NSWSC 881 (8 July 2020) – New South Wales Supreme Court**

‘Aggravated sexual assault in the context of an intimate relationship’ – ‘Animal abuse’ – ‘Assessment of whether defendant poses an unacceptable risk’ – ‘Damage to property’ – ‘Extended supervision order’ – ‘False report’ – ‘High risk offender’ – ‘High/unacceptable risk of re-offending’ – ‘History of offending in the context of intimate relationships’

Charges: Aggravated sexual assault without consent x 1; Malicious damage x 1; Larceny x 1.

Proceedings: Extended Supervision Order (ESO) application.

Facts: The defendant had previously been found guilty of aggravated sexual assault without consent. The defendant never accepted responsibility for the offence and contested the charges at trial. At the time of the offence, the male defendant was in an intimate relationship with the female victim. The defendant was possessive, erratic, physically and verbally abusive and ‘intimidating and demanding’ towards the victim. The victim asked the defendant to move out of the parties’ shared accommodation and when they met to ‘hand over his keys’, the defendant physically assaulted and raped the victim. Later, when the victim went to report the assault to the police, it transpired that ‘the defendant had earlier made a false report that he had been assaulted by the victim and that she had threatened to invent a charge of rape’ as an attempt to pre-empt the victim’s report. While she was at the police station the defendant had returned to her flat and ‘destroyed the interior’ [14] of it, he overturned the fish tank killing her fish and damaged photographs and other personal items. The trial judge’s assessment of a high risk of re-offending is supported by the statements of two forensic psychiatrists. The defendant has been subject to a number of allegations of and charges relating to verbal and physical abuse and sexual assault in the context of historical intimate relationships (spanning from 1997-present).

Issues: Whether the Court is satisfied to a high degree of probability that the offender poses an unacceptable risk of committing another serious offence if not kept under supervision.

Decision and reasoning: *Extended Supervision Order made* for a five-years including the requirement of electronic monitoring and reporting and restrictions on changing personal details (including the defendant’s name).

Allegations (not charged or prosecuted), withdrawn charges and/or dropped prosecutions are able to be relied upon by psychiatrists in assessing risk of re-offending. There is a high degree of probability that the defendant poses an unacceptable risk of committing another serious offence if not kept under supervision.