

***Hardy v Rigby* [2020] NTSC 42 (10 July 2020) – Northern Territory Supreme Court**

‘Appeal against sentence’ – ‘Exposing children to domestic and family violence’ – ‘Strangulation’

Charges: Aggravated unlawful assault x 1.

Proceedings: Appeal against sentence.

Facts: The male appellant pleaded guilty to unlawfully assaulting his wife. The offending involved threats to kill, squeezing his wife’s throat with both hands and dragging her by the throat, removing access to telephones, and exposing their child to the offending. The appellant was sentenced to a 12-month good behaviour bond and a conviction was recorded.

Grounds of appeal: The sentence was manifestly excessive because it included the recording of the conviction. Specifically –

1. Too much weight was given to “denunciation”.
2. Insufficient weight was given to evidence of positive good character including contrition and remorse.
3. The sentencing judge failed to take into account the views of the victim.
4. The sentencing judge erred by choosing to record a conviction.
5. Insufficient weight was given to evidence concerning the appellant’s mental health, and the sentence failed to include appropriate conditions to address his mental health.
6. The sentencing judge took into account the irrelevant consideration of prospective legislation increasing the penalty for assaults by strangulation.

Held: The appeal was dismissed. While the court acknowledged that the appellant did not have a prior criminal history of domestic violence offending and no evidence of prior incidents of domestic violence, the offending was still appropriately characterised as an instance of domestic violence: “It involved the use and threats of violence to control and dominate the appellant’s wife so she would ‘tell [him] the answer’” (at [50]). The offending was very serious including the fact that the appellant “grabbed SH by the throat and squeezed her throat was a significant factor in the sentencing calculus.” As per the Court in *DPP v Foster* [2019] TASCCA 15:

“Lest it be thought that grabbing the complainant by the throat and applying pressure is somehow less insidious than punching or kicking, it has been noted in an article by Heather Douglas and Robin Fitzgerald entitled “Strangulation, Domestic Violence and the Legal Response”, published in the [2014] SydLawRw 11; (2014) 36 (2) *Sydney Law Review* 231, that strangulation is a form of power and control that can have devastating psychological long-term effects on its victims in addition to a potentially fatal outcome.

“[Strangulation] can cause loss of consciousness and can cause death quickly. It has been suggested that death can occur within seven to fourteen seconds. Additionally, underlying internal injuries caused by the pressure applied to the throat can cause swelling which may develop gradually over days and airways obstruction causing death may be delayed.”

It was also significant that the appellant removed the victim’s access to telephones and outside help before strangling her, and that their child was exposed to domestic violence.