



## Judgment Summary

Supreme Court  
Australian Capital Territory  
Court of Appeal

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Wednesday, 11 October 2023

### Day v R [2023] ACTCA 39

McCallum CJ, Loukas-Karlsson and Abraham JJ

The Court of Appeal has dismissed an appeal against sentence.

The appellant was sentenced in the Supreme Court to a total sentence of 4 years and 6 months imprisonment for two counts of choking, one count of threat to kill and one count of contravening a family violence order.

The appellant appealed his sentence on five grounds: that the sentencing judge failed to take subjective circumstances into account; that the accumulation of the sentences was excessive when considering totality; and that the individual sentences, the total sentence and the non-parole period were manifestly excessive.

The Court held that there had been no error in the sentencing judge's consideration of subjective matters, particularly when the material before the Court on sentence and the offender's circumstances are assessed holistically. Further, the Court found that the submissions on this ground were directed to questions of weight and a disagreement with the sentencing judge's assessment which in itself is incapable of establishing a specific error. The Court further held that the sentences and nonparole period imposed were not outside the range of sentences properly available, given the nature of the offences and relevant sentencing principles. Therefore, the remaining grounds were not established.

Accordingly, the Court dismiss the appeal.

*This summary has been prepared for general information only. It is not intended to be a substitute for the judgment of the Court or to be used in any later consideration of the Court's judgment.*

General enquiry contact details

Telephone: (02) 6205 0000  
Email: [SC.Media@courts.act.gov.au](mailto:SC.Media@courts.act.gov.au)