***R v Luxford* [2020] QCA 272 (4 December 2020) – Queensland Court of Appeal**

'Application for leave to appeal against sentence' – 'Choking' – 'Controlling, jealous, obsessive behaviours' – 'Damaging property' – 'Following, harassing and monitoring' – 'People affected by trauma' – 'People with disability and impairment' – 'Perpetrator interventions' – 'Physical violence and harm' – 'Post-traumatic stress disorder' – 'Protection order' – 'Strangulation' – 'Threats to kill' – 'Weapon'

Charges: Choking, suffocation or strangulation in a domestic setting x 2; Assault occasioning bodily harm (domestic violence offence) x 8; Threat of actual bodily harm (domestic violence offence) x 1; Common assault (domestic violence offence) x 2; Wilful damage (domestic violence offence) x 1.

Proceedings: Application for leave to appeal against sentence.

Facts: The applicant man spent 15 years in the army, with several overseas deployments. He left on medical grounds with a shoulder injury, chronic pain, tinnitus and post-traumatic stress disorder, and was awarded compensation. He had no prior criminal history (except for a failure to secure storage of weapons charge in 2017). He participated in a Men's Behavioural Change Program, and was accepted into a program to treat PTSD. The applicant pleaded guilty and was sentenced to a period of three years and six months imprisonment for the most serious offences on the indictment (choking, suffocation or strangulation in a domestic setting x 2, Counts 12 and 13), to be served concurrently with the remaining sentences. The date for parole was fixed at 29 September 2021. The expiry date for a protection order granted to the complainant in 2017 was extended to 7 October 2025.

Grounds of appeal: The sentence was manifestly excessive as the applicant was required to serve actual time in custody.

Held: The sentencing judge erred in the imposition of a sentence that required actual custody, and the applicant was re-sentenced.

The court held that the applicant's offending could not be separated from his PTSD and also his PTSD caused custody to be a greater burden on him. While the sentencing judge applied the principles in *R v Rix* [2014] QCA 278 where the reduction in moral culpability due to an offender's PTSD was taken into account, the sentencing judge failed to recognise in the sentence that a custodial sentence would have a hasher effect on him than a person not suffering PTSD. The sentence did not give sufficient weight to both factors relevant in the applicant's case due to his PTSD (at [38]).

To reflect the gravity of the offending, the most serious offence was choking causing the complainant to lose consciousness (see *R v MCW* [2018] QCA 241) (Count 13), a higher head sentence of 4 years imprisonment was imposed to accommodate a sentence structure that provided for the applicant's immediate release from actual custody. This reflected the totality of the offending, but adjusted in recognition of the effect of the PTSD as a cause of the offending. For the choking that lasted three seconds, a sentence of 2 years and 6 months imprisonment was imposed (Count 12). The effect of the applicant's PTSD was further accommodated by suspending the sentence on Count 13 after 60 days and releasing him at the same time on parole for other offences (parole for 2 years and 4 months to provide supervision in the community). Supervision on parole was to ensure the applicant continued to access counselling and other treatment for his PTSD (at [39]).