

J T R T has been found guilty of one count of rape.

Before the commission of the crime, the defendant and the complainant's father were best friends. The defendant was a frequent visitor to the family home, visiting almost daily. He would often call in to visit on his way home after work. The complainant's parents went away on Friday, 1 September 2017 for a couple of days to celebrate their wedding anniversary. The defendant knew they were away and in fact, had talked to the complainant's father about where they might go. The complainant, aged 15, and her younger sister stayed at home looking after themselves.

On the same Friday, the defendant called into the house on his way home from work at around midday. The complainant was home from school, sick with flu and tonsillitis, and she was alone. He asked if he could have his lunch at her house and she agreed. She spoke to the defendant in the kitchen and then, feeling unwell, she told him she was going to have a lie down and he could let himself out, and the defendant said he would. She went and laid down on the couch in the lounge room and fell asleep wearing only her dressing gown.

She woke up to find the defendant's mouth on her vagina, he was kissing and licking her genitalia, and his fingers were inside her vagina. This is a case of rape involving digital penetration of her vagina and also, I find on the evidence, penetration of the complainant's genitalia with his tongue. He was undoing his trousers and already had them partially undone. The complainant screamed at him and kicked him off her. She said "what are you doing?" She started crying, he took her wrist and she pushed him away. The defendant began crying and said that he was sorry, he thought she "wanted it" and "don't tell anyone". She told him to leave repeatedly, and finally he left her house.

It is a blatant case of lack of consent. She did not know what was happening, she was asleep and therefore incapable of giving consent. His conduct was completely contrary to her wishes, as is obvious from her reaction when she awoke. She was horrified by his criminal conduct.

At no stage had the complainant given the defendant any indication that she regarded him in any way other than a family friend and her father's best friend.

A short while later that afternoon, the defendant sent her Facebook messages in which he asked her for forgiveness, and apologised. He described himself as a monster and begged her not to tell people. The messages that followed disclose a mixture of genuine remorse, self-pity, and attempts to manipulate her to discourage her from telling anyone. The manipulation included trying to make her feel sorry for him. In messages sent that afternoon, he spoke of suicide. She telephoned him to talk him out of taking his life. When he did not pick up her calls she sent a text message to him saying "I won't tell anyone, just don't do it." He responded again asking for forgiveness. His communications could only have added to her confusion and stress.

Some months later when it was obvious she needed help and support, he discouraged her from seeing a counsellor even after she told him she desperately needed help, that she had cut herself, and was having nightmares. He told her that he would help her, when he must have known he could not provide her with the help she needed. He selfishly tried to keep her silent. In other Facebook messages, he tried to minimise the seriousness of the rape and said that she would have known what he was doing, and that he thought she liked some of what he did. These were attempts by him to manipulate her to accept a false version of what happened and to diminish his wrongdoing. Fortunately, she would not be manipulated and she responded to him in a forthright way, telling him that he could not seriously make such a suggestion and that he was not to dare to try and turn this on her.

In May 2018, the complainant revealed to her mother what the defendant had done. She spoke to the police and gave a video-recorded interview which became part of her evidence, and a special hearing was held on 12 June 2019 and her pre-recorded evidence was played at the trial.

The complainant has provided the Court with a victim impact statement. She has spoken with eloquence about how she has been affected. The rape occurred in her home, somewhere she felt was safe, and the defendant took that sense of safety away from her. Her life and the way she looks at the world have been completely altered. The defendant took away her control and ownership of her body. She described feelings of blaming herself for what he had done. She became so depressed that she tried to take her life. Since that attempt, she has harmed herself. She suffers from symptoms of depression, post-traumatic stress disorder, anxiety and insomnia and is receiving treatment. For some months after the rape, the defendant continued to visit her family home and she describes during those visits being in her bedroom feeling alone and afraid.

Although there is no doubt her life will continue to be affected in many significant ways, she is a brave young woman who sees herself as a survivor and refuses to regard herself as the defendant's victim.

The complainant's mother has described in a statement the devastating effect that the crime has had on their family, including the effect on herself and her husband as they have witnessed their daughter's suffering. They feel utterly betrayed and blame themselves for trusting the defendant. They should not of course; what he did was beyond comprehending.

The defendant's circumstances are taken into account. He was 25 years of age at the time of the crime and is now 27. He is in a relationship. He has a sound employment history having worked in various labouring positions. He began working with [...deleted...] in 2015. He is well respected in that role and his employer has been supportive of him in relation to these court proceedings.

His life has centred upon his partner and his work. They are expecting their first child in early August. He has no relevant prior convictions and no offending at all since this crime. I consider that he is someone who is unlikely to reoffend and that he has sound prospects of leading a

constructive life in terms of his work, family and making a positive contribution to his community.

His criminal behaviour has no doubt had, and will continue to have, a destructive effect on his life. The inevitable term of imprisonment will be difficult. It is important though, to remember that almost always, rape victims have to live with the destructive effects of the crime far beyond the period of time that perpetrators serve in prison. After perpetrators are released from prison, their victims will continue to suffer, and their lives continue to be adversely affected.

The crime of rape is serious. Brett J when sentencing an offender for rape in November 2019 in this Court, stated the following, which has application to the crime of rape generally: "Rape is a terrible crime of violence. It involves the invasion and stripping away of a person's bodily integrity, and has very profound and longstanding psychological and sometimes physical consequences. "

There are in this case, aggravating features. The complainant was only 15, and vulnerable due her to illness and that she was at her home alone. She fell asleep while the defendant was in her presence. She trusted him to be in her home, a natural response given his close friendship with her parents. He took terrible advantage of that.

I give significant weight to the fact that he stopped his sexual attack when the complainant awoke and her distress was obvious. He did not try and continue. The length of the sentence must reflect all of the circumstances of the crime, including this mitigating consideration.

Taking all matters into account, I impose the following sentence. I record a conviction and impose four years' imprisonment to commence on 7 February 2020. Given your relatively young age, your lack of any other relevant criminal offending and what I see as your sound prospects of rehabilitation which should be encouraged, I allow the minimum non-parole period of two years.

I am required to make an order under the *Community Protection (Offender Reporting) Act* unless I am satisfied that you pose no risk at all of committing an offence of this nature in the future. Although I think the risk is very low because of matters such as your conduct in desisting and your remorse, I am not satisfied that there is no risk. I order that you be placed on the register and comply with the reporting obligations pursuant to the Act for a period of three years after your release.