

STATE OF TASMANIA v R B R
COMMENTS ON PASSING SENTENCE

11 MARCH 2020
BLOW CJ

Mr R has pleaded guilty to three charges on an indictment. They comprise two charges of sexual intercourse with a young person under the age of 17 years, and one charge of supplying a controlled drug to a child. He has also pleaded guilty to two summary offences. One is a charge of emotional abuse or intimidation, contrary to s 9 of the *Family Violence Act* 2004, and the other is a charge of assault under the *Police Offences Act* 1935. I will be dealing with those two offences under s 385A of the *Criminal Code*.

All of these charges relate to a teenage girl with whom Mr R had a sexual relationship. The first act of sexual intercourse between them occurred when he was 42 and she was 14. She had been living with her grandmother. Mr R knew the family. She visited him. He was living near her grandmother's place. He bought her cigarettes and alcohol and paid for her mobile phone credit. Initially their relationship was apparently like that of a stepfather and a stepdaughter, but at some point it became a sexual relationship.

Count 1 on the indictment relates to the first act of vaginal sexual intercourse between Mr R and the teenage girl. He had vaginal intercourse with her and proceeded to ejaculation.

Some months passed before he next had sexual intercourse with her. Eventually he and she had sexual intercourse about 30 times. The last act of intercourse was about 13 or 14 months after the first act.

Mr R has only been charged in relation to two acts of sexual intercourse. I will be sentencing him for those acts only, and not for the uncharged acts of intercourse. However I will be sentencing him on the basis that those two acts were not isolated acts of sexual intercourse.

Section 9 of the *Family Violence Act* reads as follows:

"A person must not pursue a course of conduct that he or she knows, or ought to know, is likely to have the effect of unreasonably controlling or intimidating, or causing mental harm, apprehension or fear in, his or her spouse or partner."

Mr R has pleaded guilty to a charge under that section. By doing so he has acknowledged that the relationship that developed between him and the teenage girl became a "significant relationship" within the meaning of the *Family Violence Act*, or that she became his partner. During the 13 or 14 month period that I have referred to, he became increasingly jealous, possessive and violent. Initially the girl had a boyfriend. The relationship with the boyfriend ended. At some stage after that the relationship with Mr R became a "significant relationship" for the purposes of the *Family Violence Act*. His behaviour towards her became worse once the girl had split up with her boyfriend. There came a time, about four months before the end of Mr R's sexual relationship with the girl, when she moved out of her grandmother's home and into other accommodation. Mr R monitored her telephone calls. She did not go to her school leavers' dinner because of him. Case workers who were doing their best to look after the girl noted that there were phone conversations between Mr R and her many times a day, as well as face to face visits, usually daily. She was subjected to threats that he would take his own life. Those facts were asserted by the Crown, and not disputed.

Towards the end of the sexual relationship, a day or so before the last act of sexual intercourse, Mr R supplied methylamphetamine to the girl when they were visiting a friend of his. The girl told support workers what occurred and they saw puncture marks to her arm. As a result Mr R was charged on the indictment with supplying a controlled drug to a child, and he pleaded guilty to that charge.

The final charge on the indictment is the second charge of sexual intercourse with a young person under the age of 17 years. That act of intercourse occurred on an occasion when Mr R and the girl were camping in the bush. He was 43 and she was 16. They had consensual sexual intercourse in a tent. That was their last act of sexual intercourse. The next morning an argument developed between them. I do not need to go into details about the argument, but there was yelling and screaming, and it reached a point where the girl initiated the use of force by pushing Mr R to the chest, scratching him and grabbing him by the throat. He retaliated by assaulting her. He grabbed her to the arm and shoved her away into some bushes. That assault is the subject of the summary charge under the *Police Offences Act* that I have referred to. That marked the end of the relationship between Mr R and the girl.

She has not provided a victim impact statement. She was a vulnerable teenager who was receiving assistance from case workers. Mr R must have been aware of that situation, at least to some degree. It is a crime for someone of his age to have sexual intercourse with a person under the age of 17 years because people under the age of 17, because of their immaturity, make bad choices about sexual activity, and they need to be protected from older people who can cause them all sorts of emotional harm. I do not know what the impact of Mr R's conduct has been on the complainant. It cannot have been good. It can only have exacerbated the problems that she had in her life.

Mr R is now in his mid-40s. He has a number of prior convictions, but none for sexual offences. He has five convictions for assaults, some of which resulted in suspended sentences, but the last of those was more than 10 years ago. His early life was difficult. However he has had a reasonable employment history. He has medical problems, including chronic back pain and heart problems, at least in the past. It counts in his favour that he has pleaded guilty to these charges, has saved the State the cost and inconvenience of a trial, and has saved the complainant from having to give evidence, although it is only recently that she would have learned that she was not going to have to do that. Mr R has been in custody since 21 December 2018, and I will be backdating his sentence to that date.

Mr R, I convict you and sentence you to two years six months' imprisonment with effect from 21 December 2018. You will not be eligible for parole until you have served 15 months of this sentence. I order that the Registrar appointed under s 42 of the *Community Protection (Offender Reporting) Act* 2005 place your name on the register under that Act, and that you comply with your reporting obligations under that Act for a period of 10 years from today.

I order that the two summary offences that I have referred to be recorded on your criminal record as family violence offences.