

JPW has pleaded guilty to one count of rape. The complainant and the defendant had met when they were both inpatients at the Department of Psychiatric Medicine at the Royal Hobart Hospital in March 2018. The complainant suffered from a number of psychiatric disorders including a personality disorder, post-traumatic stress disorder, panic disorder, anxiety, and suicidal ideation. These conditions required admissions to hospital following suicide attempts and concerns for her welfare.

The defendant suffered major depression and also suicidal ideation and he had been admitted to hospital following a suicide attempt.

They became friends and formed a relationship and they were in that relationship, involving sexual relations, at the time of the incident the subject of the charge in May 2018. They were not living together, although the defendant would often stay at the complainant's home address in New Town.

On Saturday 5 May, during the evening, the complainant and the defendant were at the complainant's home. The complainant took her usual medication, which made her drowsy and she went to bed and fell asleep. The defendant went to bed about an hour later. The complainant woke up. She was lying on her side, her pyjama pants had been pulled down and the defendant was positioned behind her having vaginal sexual intercourse with her. The complainant asked the defendant what he was doing and told him to stop. He did not continue and he did not ejaculate.

Later that day, the complainant went to the Royal Hobart Hospital where a sexual assault forensic examination was conducted. She spoke with police on the same day but did not make an official complaint until almost a year later in April 2019. The complainant and the defendant continued their relationship until approximately March 2019.

In May 2019, the defendant attended the police station by appointment. He participated in an interview and made full admissions. He told police that there was an occasion when he had done the wrong thing by "helping himself". He told police it never happened again and he apologised to the complainant immediately. He was aware that afterwards the complainant had been to the hospital and made a complaint which was on hold, and she had been given some time to decide whether she wanted to go ahead. He said that after the incident and his apology, he and the complainant did not talk about the incident again. That is not disputed.

The victim has suffered emotionally from the rape as outlined in her victim impact statement. She has had nightmares and flashbacks. She has had to move out of the house where it happened. Her pre-existing mental health issues have continued, but that continuation is not attributed to the rape.

The defendant is now 47 years of age. He has no prior convictions at all. He works as a landscaper and gardener. He belongs to a close and supportive family. Prior to his incarceration, he resided in the Derwent Valley in a caravan on his sister's property, and she provided him with significant support.

Approximately three years ago, the defendant's mental health deteriorated after the breakdown of a significant long-term relationship. The couple had been together for some 16 years. After a lengthy, emotionally difficult and expensive course of IVF treatment, they eventually had a child. However, the relationship ended when the child was just one year of age. The ending of the relationship and separation from his wife was the catalyst it seems, for his development of major depression. Consequently, he has had a number of hospital admissions as a voluntary and involuntary patient.

The crime of rape is inherently a serious crime of violence. This rape occurred within a relationship; the defendant was trusted by the complainant, as someone safe to be with. When the complainant was asleep and vulnerable, he breached that trust. The defendant's counsel has highlighted that there is an absence of many aggravating features often associated with this crime and that is correct. There was no additional violence beyond the act of penetration such as violence inflicted to restrain, or violence inflicted to overwhelm a complainant. The defendant's crime was not planned and was not predatory. I accept too that the complainant had not been rendered more vulnerable than usual, such as due to an abnormal reaction to medication. He desisted as soon as he was asked to stop and he apologised. His conduct then and also his police confession almost a year later is strongly indicative of remorse and an appreciation of his wrongdoing. He has not sought to blame or manipulate the complainant to avoid responsibility.

I have a report provided by Dr Mike Jordan, Forensic Psychiatrist, Statewide Forensic Mental Health Service dated 6 April 2020. It usefully documents the defendant's psychiatric admissions to hospital. The first was a period of three weeks in February 2018, when he met the complainant. Subsequently, there have been six admissions to hospital: 5 April when he presented with suicidal ideation and had stopped taking his anti-depressant medication and then, on 30 April 2018 with symptoms of mental distress. These two admissions to hospital are close in time to the date in question of 5 May 2018. There was another admission three weeks after 5 May when he presented with suicidal ideation. Then later on 8 July, 16 September, and then the most recent in November 2019, three days before a court appearance for this charge.

His conduct was out of character. There is information which provides the Court with some explanation and context for his offending. The defendant had consumed alcohol, and it is noted that his alcohol consumption was at problematic levels generally. While the effects of alcohol may go towards an explanation for his conduct, it is important to emphasise that it provides no excuse for his conduct, at all, in any way. And indeed, the defendant does not seek to excuse his conduct based on this factor. Further, in light of the information I have, I proceed on the basis that his acute emotional distress and mental health difficulties had implications for

alcohol dependence in the sense that he was more vulnerable than he otherwise would be to such dependence. His emotional state and mental health difficulties also provide some context for his uncharacteristic behaviour.

Imprisonment will undoubtedly be more difficult for him than others because of his mental health condition. Dr Jordan notes that since he was remanded in custody, he has continued to take antidepressant medication but does not appear to have engaged in significant psychological therapy, although the prison is aware of his depressive disorder. Dr Jordan notes that the defendant continues to display evidence of depression. He also meets the criteria for alcohol use disorder, a condition that has developed in recent years.

Dr Jordan has also assessed his future risk of offending and found no evidence of sexually deviant traits or antisocial traits or other markers. His risk of reoffending in terms of sexual crimes is described as low.

Dr Jordan has identified a need for support in various respects. He says that it is important that the defendant uses his time in custody to gain perspective with respect to his relationship breakdown, as well as obtaining practical support. Dr Jordan identifies scope for psychological support while in custody, although I note it is possible that may be jeopardised by the current COVID – 19 pandemic.

Dr Jordan states that once released, the defendant should have ongoing psychiatric and psychological support to reduce any risk factors, and that it is paramount that he be able to re-enter the work force and that he control his consumption of alcohol. Dr Jordan expects that the defendant would be a good candidate for on-going community monitoring with a high expectation of acquiescence.

In fixing the sentence, I note that the defendant has pleaded guilty and indicated that plea at an early stage, a few months after he was charged, providing vindication for the victim and avoiding for her the stress of anticipating court proceedings. Given her mental health that stress may have been particularly difficult for her. His sentence will be reduced, to reflect the full mitigatory value of this significant factor.

Also in fixing the sentence, I note that since the defendant was remanded in custody there has been the outbreak of the COVID – 19 pandemic. A prison environment gives rise to an increased risk of transmission in the event of any infection within that environment. Consequently, it gives rise to some cause for anxiety for the defendant and other prisoners. The defendant's capacity for self-isolation was much more significant in the community than it is within the prison environment. Further, I note that the response of Corrective Services to the pandemic will likely mean that the defendant's experience of prison will be more onerous than is generally the case. There are presently "lock-downs" for days at a time, restrictions in terms of telephone contact, face to face visits have been cancelled and there is reduced access to programs, counselling and rehabilitation courses. These restrictions are likely to continue for the months to come. This will be particularly difficult for someone who has never been to

prison before, who has mental health difficulties, and who relies on their family for support. I have taken these matters into account in determining the length of the actual term to be served.

In this case there is not a particular need for specific deterrence; the defendant is someone who is unlikely to reoffend. As I have said, his conduct was out of character. Given the nature of the crime, his relatively low level of culpability, his remorse and his mental health condition, general deterrence is also not a dominant consideration. There is though, a need to reflect the inherent seriousness of the crime of rape, to vindicate the victim and reflect the harm she has suffered, which may well prove to be lasting.

The orders I impose are these: I record a conviction and I impose two years and six months' imprisonment to date from 19 February 2020. An exceptional course is appropriate given the nature of the crime and the offender and I have determined to suspend part of that term of imprisonment, subject to strict conditions which are designed to promote his rehabilitation and, upon his release, support his re-integration into the community. I suspend 12 months of that sentence. This portion of the sentence is suspended on the following conditions:

- He must not commit an offence that could attract a period of imprisonment for two years from his release (this is the operational period of the order and the commencement date is from his release).
- He is subject to supervision from a probation officer for that time period of two years.
- He must report, within one clear working day of his release, to a probation officer at the Hobart Community Corrections office.
- He must submit, during the two year period, to a probation officer as required by that probation officer.
- He must comply with the reasonable and lawful directions of a probation officer or a supervisor.
- He must not leave or stay outside Tasmania without the permission of a probation officer.
- He must give notification to a probation officer of any change of address or employment within two working days after the change.
- He must attend educational and other programs as directed by a probation officer.
- He must undergo assessment and treatment for alcohol dependency as directed by a probation officer.
- He must submit to medical psychological, or psychiatric assessment or treatment as directed by his probation officer.

The effective portion of the sentence is a term of 18 months. That is backdated to 19 February 2020. The defendant is not to be eligible to apply for parole until he has served the minimum of half of that sentence. In light of the report from Dr Jordan, and in light of the information that I have about this crime, I am satisfied that an order under the *Community Protection Offender Reporting Act* is not required.