

Mr W, the jury has found you guilty of two counts of rape.

It is obvious that the jury accepted the complainant as a truthful and accurate witness. I was also of that opinion and I accept her evidence as to the circumstances of these crimes. In particular I find as follows.

The background was that you and she had been in a relationship for approximately nine years which ended in March of 2019. You have two children together. A family violence order had been in place for some time, and was certainly in force at the time that you committed these crimes. One of the conditions of that order was that you were not to be within 100 metres of or contact the complainant directly or indirectly, except for certain purposes, and further that you were not to go within 100 metres of the boundary of any premises in which she was staying or living from time to time.

On the day that the crimes were committed, the early hours of 15 June 2019, you arrived at the complainant's residence shortly after 11 pm on 14 June 2019. She lived in this residence, a two bedroom unit, with her 14-year-old son from a former relationship. You had lived there with her for a short period of time in 2018. Your arrival was in breach of the family violence order and without prior notice to her. You were certainly not invited there, nor were you welcome. Arriving like this, that is without invitation and in breach of the family violence order, was something you had done on a number of prior occasions. These visits were also not welcomed by the complainant. She did not want contact with you. In an effort to cut off contact, she had blocked you from her mobile telephone at an earlier time.

I accept that one of your reasons for going to her unit on the day in question was because you had recently become homeless. However, it is also clear to me that you were unhappy that the complainant had recently entered into a relationship with another man, a person whom you knew. Your unhappiness did not arise from any concern on your part about the complainant, but rather because you still regarded the complainant as effectively belonging to you. You were unreasonably jealous about this new relationship.

Before your arrival, the complainant had been sitting in the shed which was attached to her unit, socialising with a female neighbour and her son. She may have had one or two alcoholic drinks but was certainly not affected by this alcohol. Her neighbour had gone home before your arrival, promising to return but, when she did not, the complainant had gone to her residence to check on her and found that she had fallen asleep. The complainant then returned to her home but left her front door unlocked, in case her neighbour returned as she had promised. You arrived shortly after. When she saw that you were there, she asked you to leave but you told her that you intended to move back in. She repeated her demands that you leave, several times, but you refused and started to become agitated. You then started to become verbally abusive to her. The verbal abuse was related to her being in the new relationship. You made hurtful comments about the parentage of your eldest child with the complainant and also told the complainant that she was a slut and an unfit mother. It is clear that the complainant's 14-year-old son witnessed this. As the complainant describes, he became panicky and made arrangements to be collected by his father. Fortunately, he was not in the unit to witness what happened next.

At one point after her son had left, the complainant went to the bathroom. When she opened the door to come out, you were standing there. You took her in a bear hug and told her more than once that she would pay the price for sleeping with other men, and that she would always belong to you. She told you to leave her alone and attempted to physically struggle with you but you are much bigger and stronger than her, and certainly were at that time, and she was not able to fight you off. You then forced her into the bedroom, pushed her back onto the bed and removed her trousers and underpants. You pinned her to the bed with your knees while you were doing this. You then vaginally raped her. After your penis had been in her vagina for a minute or two, you then penetrated her anus with your penis. She felt two deep penetrations and extreme pain. I am satisfied that your penis fully penetrated her anus for at least two thrusts, and that this caused a small laceration in the external area of her anus. This laceration was discovered and noted by subsequent medical examination. It was this laceration which at the very least contributed to the pain. You then withdrew from her.

In your evidence at trial, you did not suggest that there was consent to the act of anal penetration, but you said that your penis had slipped into her anus by mistake, in essence, unintentionally. I infer that you claim that it was your belief that you were still penetrating the complainant's vagina when it was actually inside her anus. The jury's verdict leaves open two possible factual scenarios. The first is that you intended to perform anal penetration without consent, and knew that you were doing so. Alternatively, it was open to the jury to find that the anal penetration was unforeseen and not intended by you, but occurred during the course of the vaginal rape of the complainant. The jury was instructed by me that you would be criminally responsible for the rape constituted by the penetration of her anus under either scenario. I have considered the possibility that you did not initially intend to penetrate her anus with your penis, and that this came about because you were perhaps under the influence of an illicit substance when you committed these crimes, and the effect of those drugs reduced your capacity to perceive the nature of your contact with the complainant. However, when I have regard to all the evidence, I am satisfied beyond reasonable doubt that you intentionally penetrated the complainant's anus and continued penetration notwithstanding the complainant's obvious expressions of pain. The jury rejected, and I reject, your evidence that you thought you had only bumped your penis against her anus. I accept the complainant's evidence that you thrust deeply on at least two occasions after that penetration had been effected. There is no doubt that this would have caused her enormous pain and that she was screaming because of the pain when you did so. Further, although you did eventually withdraw, and told her on a number of occasions that you were sorry, your expressions of remorse were also accompanied by the statement that she needed to be taught a lesson. This clearly indicates that the act of rape was used by you as a physical attack on the complainant in order to punish her for entering a new relationship, and to subjugate her and attempt to control her. This is consistent with your use of this act to degrade her and this in turn is consistent with the intentional act of anal penetration. I suspect, however, that the apology itself was genuine because you had not anticipated and probably did not intend to cause actual physical injury.

Throughout these acts, the complainant was pinned by your body weight on the bed. She unsuccessfully continued her attempts to fight you off. It was not possible for you to be under any doubt that she was not consenting to what you were doing, but it follows from what I have already said that her consent was not something of concern to you. On the contrary, you wanted to use this act to hurt her and, accordingly, you were well aware that she did not want to have sex with you.

After you withdrew from her, the complainant discovered that she was bleeding from the anal area, and I have already made the point about what was found during the subsequent medical examination. It seems that you then put a load of washing on and, at some point, you sat in a chair in the lounge room and fell asleep. The complainant lay on the bed crying, in pain, bleeding and sick for about 20 minutes or so. When she realised that you had fallen asleep, probably because things had gone quiet, she fled from the unit, and, despite her injury, walked a relatively lengthy distance to the residence of friends. With their assistance, she immediately contacted police.

An impact statement from the complainant has been read to me. She has very clearly expressed the significant and traumatic effect of the commission of these crimes on her. There have been many immediate manifestations of this trauma. She feels her life has been changed forever, and she is perfectly justified in feeling this way. The courts are very familiar with the long-term traumatic consequences of sexual and family violence such as that perpetrated by you in this case. I do not underestimate the pain, degradation and trauma experienced by her during and immediately after the commission of these crimes. Further, I have no doubt that the psychological and emotional consequences of being subjected to this conduct will be with her for the long-term and possibly permanently.

You are 34 years of age. You have a significant criminal history, which commenced substantively when you were 20 years of age. Since then, you have been convicted of many and varied offences. It is true that your prior convictions do not include those related to sexual violence, but there are a number of assaults and family violence offences. In 2010, you were sentenced to imprisonment by this Court for a serious assault. You have received sentences of imprisonment on other occasions, including those imposed since your commission of these crimes for family violence offending committed both before and after these crimes. I note that the sentence imposed on 3 October 2019 related to a number of breaches of family violence orders, including those involved in your attendance at the complainant's residence on the night in question.

In terms of your general background, I am told by your counsel that you have been on disability pension for some years because of problems to do with learning and literacy. It is clear that you have had a serious problem with drugs for a substantial part of your adult life. Your counsel has given me a considerable amount of information about this. I am told that although you have had a drug problem for many years, it became significantly worse in and after 2013 when your brother went missing. He is presumed to have been murdered, but no one has been charged with respect to this presumed death, although there have been ongoing proceedings in respect of related charges. I am told that this has affected you, as I am sure it has, and that your life has been on a downhill spiral since then. You still have the support of your wider family and you still retain work skills which you utilised in an industrious way prior to 2013. Your counsel has also put to me that the fact that you gave evidence for the prosecution in a murder trial, in respect of which I was the trial judge in 2016, and have been subjected to threats during your time in custody as a result of giving that evidence. This is directly relevant to sentencing because it means that you are currently being, and are likely to be, held in restricted circumstances for your own protection during your time in prison. All of this accentuates the restricted nature of life in prison resulting from the current pandemic. I think it is appropriate to take into account that your experience of prison is likely to be more difficult than would otherwise be the case if you had not given that evidence.

I regard your actions as serious examples of the crime of rape. The context in which the crimes were committed, the fact that you committed these crimes at the complainant's home despite her apparent protection by a family violence order, your motivation for committing the crimes, and the painful and degrading experience to which you subjected the complainant, are factors which seriously aggravate your moral culpability. These were serious acts of family violence. The courts and the community are rightly shocked and outraged by conduct of this nature, and reject such violence unequivocally. There is a need for an emphasis on general deterrence and denunciation in the assessment of sentence. I can detect no significant mitigating factors. You have not expressed or demonstrated any remorse. I am satisfied that you may well have been under the influence of substances, probably illicit drugs, perhaps methylamphetamine, at the time that you committed these crimes. To some extent, this would explain the unrestrained nature of your anger and violence. However, it will not provide you with any mitigation. On the contrary, the fact that you would act in this way under the influence of illicit substances suggests a risk of repetition of such conduct in the future, and would be relevant to the question of general deterrence. However, having made that comment, I do not intend to aggravate or indeed mitigate the sentence because of that observation.

The orders I make are as follows:

- 1 You are convicted of the crimes of which you have been found guilty.
- 2 You are sentenced to a global term of six years' imprisonment, which will be backdated to 13 March 2020. Because I think that there is some prospect of rehabilitation in the longer term, I am prepared to allow for early release on parole. However, I will fix a non-parole period having regard to my assessment of the minimum time which you should spend in custody, having regard to all factors, but particularly having regard to the serious nature of these crimes. I order that you not be eligible for parole until you have served three years and nine months of the sentence.
- 3 I am required to make an order under the *Community Protection (Offender Reporting) Act 2005*, unless I am satisfied that you do not pose a risk of committing a reportable offence in the future. Having regard to the circumstances of this case, I am not satisfied of that matter and, accordingly, must make an order. The maximum period of such an order is for the rest of your life. I do not think that the maximum is necessary, particularly because of the possibility of rehabilitation, but because of the circumstances of this crime, I think that the risk of re-offence may be a factor for a significant period. I order that your name be placed on the register pursuant to that Act and that you comply with the reporting obligations under that Act for a period of 10 years from the time of your release from actual custody.
- 4 Pursuant to s 13A of the *Family Violence Act*, I direct that each crime be recorded on your criminal record as a family violence offence.