

Mr Berg, the jury has found you guilty of the crime of rape. The victim was a 14-year-old female, who at the relevant time was in the care of the child protection authorities and residing in a residential facility. There was general evidence that she had a low level of intellectual functioning, but there was no specificity about this.

You committed the crime on 19 January 2019. Again, there is little evidence as to how you came into contact with her, but it would seem that you had befriended either her or her 16-year-old sister. Her sister was also in care and had similar intellectual limitations. In any event, the three of you met up on the night of the crime and ended up back at your unit. You supplied both girls with vodka. It is clear that the complainant consumed a very significant quantity of alcohol, and I am satisfied that you must have been aware of that, given that you had supplied the alcohol to her. Scientific evidence established that when the crime was committed, it was likely that her blood alcohol level was between .22 and in excess of .5. The most probable level is around .3. On any view, she was extremely intoxicated and unable to provide informed consent to anything, let alone sexual contact. It is probable that at the time of the crime, she was either asleep or comatose. The only conclusion available on the evidence is that you took advantage of her incapacitation to rape her. She was, of course, vulnerable to your conduct in supplying her with alcohol because of her age and level of intellectual functioning. I am not sure how much you knew about the latter, that is her level of intellectual functioning, but I am satisfied that you certainly knew she was a young teenage girl. You may not have known her precise age, but I do not think that you took any steps to enquire or find out about that. I know nothing about your prior relationship with her, and I will not proceed on the basis that there was any particular relationship which implied an obligation of trust, but your actions were clearly predatory. There is no suggestion that you used any extraneous violence, in addition to that involved in the bodily intrusion inherent in rape, and it would seem that you did not ejaculate inside the victim. However, the evidence also establishes that the rape involved a full act of sexual intercourse, committed against a child who was completely incapacitated at the time. Further, although I am unable to conclude that the crime was premeditated in the sense that you had planned this outcome and had lured the girl back to your apartment for that purpose, it is clear from the evidence that you did not commit the crime in a spontaneous way. I accept the evidence of the victim's sister, which establishes that you committed this crime in the bedroom of the apartment. Given the state of inebriation of the victim, it would have been necessary for you to assist or perhaps even carry her into the bedroom and to remove her clothing before perpetrating the crime. This aggravates your moral culpability because it adds a quality of deliberateness and resolution to your conduct. It is also clear that the level of alcohol in the child's body created a significant risk to her health. This was obviously completely disregarded by you while you took advantage of her to commit the crime. Finally, when police arrived, you did little to co-operate with them and, in fact, initially denied that she was in your apartment. You did this although it was obvious that she required assistance because of her intoxication and the fact that she had been raped by you. All of these circumstances aggravate your moral culpability, and place this crime into a most serious category.

You are 41 years of age. As I have heard today, you have had, in recent times, I am not sure for how long, but you have had a drug problem. You also have a lengthy criminal history which mostly consists of traffic offending, some of it quite serious, as well as a number of offences of dishonesty and, in more recent years, some drug offences. However, there is nothing of the

same nature or degree of seriousness as this crime. On 15 May 2020, you were sentenced to imprisonment in respect of numerous summary offences committed between 2018 and 2020. I am told that you will be eligible for release in respect of that sentence early in 2021. This crime, of course, involves completely separate offending and the sentence I impose will be cumulative. However, I will apply the principles of totality by assessing and taking into account the overall effect of the combined sentences.

Having regard to the objective seriousness of this crime, the only possible sentence is a significant sentence of imprisonment. I will allow for release on parole. Because of the serious nature of the crime, I would have provided for a non-parole period longer than the prescribed minimum term. However, having regard to the question of totality, I think that the minimum parole period of one half of the sentence should apply. Because it appears there was no non-parole period prescribed for the sentence imposed in May, the non-parole period imposed by me will operate cumulatively upon the entire current sentence.

Accordingly, I order as follows:

- 1      You are convicted of the crime of which you have been found guilty.
- 2      You are sentenced to a term of 5 years' imprisonment, which will be served cumulatively upon the sentence you are currently serving. I order that you not be eligible for parole until you have served one half of that 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 is for the rest of your life. I do not think the maximum is necessary, but given the nature of this crime, and its predatory nature, there should be an order in place for a lengthy period. Accordingly, 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 15 years, which will commence when you are released from prison.