

STATE OF TASMANIA v DANIEL JAKE VESINGER
COMMENTS ON PASSING SENTENCE

23 NOVEMBER 2020
ESTCOURT J

The defendant has pleaded guilty has pleaded guilty to one count of persistent family violence, contrary to s 170A of the *Criminal Code*.

The complainant and the defendant were in a relationship for approximately 4 years before separating in around May 2018. There is one child to the relationship.

In around October 2014 the defendant moved into the complainant's home. The complainant describes that prior to and during her pregnancy with their child, her sexual relationship with the defendant was normal. After giving birth however she describes that her "*sex drive was significantly lower and basically non-existent*".

The complainant, then aged about 22 years old spoke openly to the defendant, then aged about 23, about her lack of interest in sexual intercourse. Despite this the defendant continued to pursue sex with her.

On an occasion between 1 December 2016 and 31 January 2017, the complainant and defendant commenced intercourse in the bedroom. The complainant was unable to become aroused enough to have sex and told the defendant that she did not want to. At the time of communicating this the defendant's penis was in the complainant's vagina.

However he did not acknowledge what she said and continued. He used his weight to hold her down and the complainant was unable to get free. After he ejaculated he became very upset and apologised to the complainant.

The defendant and complainant moved into a home that they had purchased in around April 2017.

On an occasion between 1 June 2017 and 31 August 2017 the complainant was in her bedroom and the defendant approached her for sex. They began kissing and the defendant got on top of the her. The complainant told the defendant that she did not want to.

The defendant pulled the complainant's pyjama pants down and inserted his penis into her vagina. He held her down and had sexual intercourse with her. Again, the complainant was unable to get free or make the defendant stop. The defendant told the complainant to "*just lay there and take it*". The complainant was crying. The defendant continued until he ejaculated.

On an occasion between 1 April 2017 and 21 July 2018 the complainant was in bed at the Turners Beach home. The defendant was giving the complainant a massage. The complainant was on her stomach and the defendant on top of her back. Vaginal sexual intercourse commenced but the complainant was unable to become aroused. She told the defendant to stop and was crying. The defendant continued to have sexual intercourse with the complainant until he ejaculated.

The complainant states that the defendant had sexual intercourse with her without her consent on at least 20 occasions during the course of their relationship. The incidents outlined are the occasions that she can recall specifically.

On 12 September 2018 the complainant and defendant had a disagreement and as a result she asked the defendant to leave the house, and when he refused she called police. At the time she did that she outlined a brief history of the relationship to police, before making a more detailed statutory declaration on 17 September 2018.

The defendant was subsequently interviewed and arrested.

I have read a victim impact statement from the complainant. She has suffered severely from depression and anxiety. She was prescribed several medications in attempt to control her moods and feelings but she still has the distressing memories. She struggles to sleep on an average night as she cannot switch her mind off and relax as the bedroom has become an unpleasant place to be. It is not uncommon for her to have nightmares. She has gone from being happy, outgoing and confident to reserved, anxious and quiet. The thought of giving evidence at trial had absolutely terrified her.

The defendant has been medicated on and off for depression since he was sixteen years old. He has seen a number of mental health professionals during his adult life.

He reached grade 10 in schooling on the North West Coast and was in full-time employment as a plasterer until 10 November 2020, when he terminated his employment in anticipation of being remanded in custody in respect of this offence earlier last week.

He has no prior convictions.

He pleaded guilty 12 November 2020 to the charge against him. He is entitled to some consideration for this plea although it was very late coming, namely five days before the trial was listed to commence.

Although the complainant had been terrified at the prospect of giving evidence she was spared the ordeal of having to do so. It is understood that this prevented the complainant from having to meet with Crown Counsel in preparation for trial. There is a utilitarian benefit to the State in avoiding the cost of a trial. The defendant expressed remorse to police but although he did so, I am told that his failure to demonstrate that remorse by pleading guilty earlier than he did, was as a result of him being unable to come to grips with the inevitable outcome of a plea of guilty. He co-operated with police.

Victims of acts of family violence are frequently unable to give particulars of each and every act of violence during a period of prolonged offending. The State has listed the three specific acts of family violence the complainant is able to identify with some precision, although the defendant in fact admitted to more. The defendant must be sentenced on the basis that each specific act is part of a course of conduct involving other, sometimes many other, unspecified acts.

It is only some two years since the crime of persistent family violence was created under the *Criminal Code*, so that no discernible sentencing range is possible. I am aware of only a handful of sentences in this Court for this crime. The defendant must however suffer the same penalty as he would have suffered had the penalty been imposed in respect of the individual acts of rape constituting the crime of persistent family violence. Such that the sentence is, and must be, without losing sight of the totality principle, a just and appropriate response to the measure of the defendant's total criminality – but in the context of a course of conduct involving numerous other unspecified acts over a period of some 18 months.

Each of the identified incidents were thoughtless, selfish and brutish and together they have obviously had devastating psychological long-term effects on the complainant.

Taking all matters into account the defendant is convicted and sentenced to 8 years' imprisonment with parole eligibility after serving half of that sentence.

I record the offence as a family violence offence.

In all of the circumstances, I am not satisfied that the defendant poses a risk of re-offending, and I make no order under the *Community Protection (Offender Reporting) Act 2005*.