

STATE OF TASMANIA v RPP
COMMENTS ON PASSING SENTENCE

26 FEBRUARY 2021
ESTCOURT J

The defendant, aged 42, has been found guilty by a jury of the rape of a child.

In about August or September 2014 he raped a barely pubescent 13 year old girl, at a sleepover at his unit, while his own 15 year old daughter was asleep on the floor, next to him and the victim who was her friend.

The rape was callous and brutal. I am satisfied to the required standard that he pinned the child down with his arms and his legs and ripped her sleep clothing and underpants at the crotch in order to penetrate her, either touching her vagina or digitally penetrating her vagina. I am unable to make a finding as to which to the requisite standard. He either placed a pillow over her face and/or placed his hand over her mouth and nose to prevent her from screaming.

Penetration was painful for the victim and not easily achieved by him. But he persisted and, having succeeded, continued sexual intercourse with her, I infer, unprotected, in her words "for a while", until, "he finished".

After the attack he threatened the child with harm to her, and to her family, by burning their house down with them in it, if she reported the rape.

The child suffered bleeding from the vagina and was in pain for some weeks. She has also suffered great psychological harm requiring treatment. She has severe anxiety and has self-harmed because of what was done to her. She cannot eat properly and she cannot maintain an ordinary loving relationship.

There are no mitigating circumstances in this case. The defendant shows no remorse and continues to deny his crime. He put his young victim through the ordeal of being cross-examined. He is not to be sentenced of course for maintaining a plea of not guilty.

I have had the benefit of a pre-sentence report and two psychologists' reports, the contents of which I take into careful account.

The defendant has been assessed as having high risks/needs and therefore a 12 month Community Correction Order with supervision was recommended. However he did not engage in his last supervision order, and I do not make a further order.

The author of the first psychologist's report, Dr Emma Rouse, is of the opinion that the defendant suffers with post-traumatic stress disorder, because, when he was less than six years old when he witnessed violence perpetrated by his father – and because of the other adversities that occurred in his family – as both these factors increase the likelihood of an individual developing trauma-related disorders. She states that the defendant's physiological hyper-arousal means he is chronically agitated, easily startled and has poor emotion regulation.

She states that due to these symptoms of post-traumatic stress disorder, including agitation, distress, irritable and angry outbursts, being easily slighted and feeling persecuted and victimised, prison will be a difficult environment for him to adjust to. That is a view shared by the defendant's own reporting psychologist, Dr Georgina O'Donnell. I take that into account as

enlivening the fifth limb of *Verdins* for the purposes of setting both the head sentence and the non-parole period.

Mr Scott, counsel for the defendant, submits that any sentence ought to be moderated to take into account the defendant's considerably disrupted upbringing and its impact upon him.

When the defendant was 2 years old Child Protection became involved with him and his father. His mother had left him in the care of his father soon after birth. Alcohol abuse and misuse was a common feature within his father's home. At age 6 or 7 his mother returned unexpectedly, and without the knowledge of his father, and abducted him to Western Australia. He was ultimately returned to the care of his father. At or around age 10, he was sexually abused when he was raped by a male who was a stranger to him.

This had a traumatising impact on the defendant, and he suffers nightmares and flashbacks on occasion related to the sexual abuse. The effects of physical and sexual abuse are well known. Mr Scott refers to *R v Ryan* [2019] NSWDC 195 at [60]-[61] as an example.

At about age 11 or 12, the defendant went to live with his mother in the Northern Territory. While he was there, he was assaulted by his stepfather on a weekly basis. To escape the abuse, he ran away from home at age 13, thereby experiencing his first period of homelessness. At about age 13 or 14, he became a ward of the Northern Territory.

I take all of those matters and their connection with the defendant's post-traumatic stress disorder into account. However, in my view, the circumstances of this crime and its seriousness are such as to subjugate the defendant's deprived background to principles of deterrence and denunciation and militate against modification of sentence on the basis of the *Bugmy* principle.

I take into account the delay in this matter before trial.

Rape is always a grave crime, and this is an atrocious example of it. It calls for a sentence which reflects a high level of punishment, denunciation and retribution, provides the victim with appropriate vindication, protects the public and marks the proper feelings of outrage which the commission of such an atrocity would raise in the minds of the community: see *Baldock v SoT* [2015] TASSCA 3.

The defendant is convicted of rape. He is sentenced to 6 years' imprisonment with a non-parole period of 3 years. The sentence is backdated to 28 July 2020.

The defendant has been assessed as having a long term risk of sexual recidivism in the moderate to low category. His name will be placed on the register under the *Community Protection (Offender Reporting) Act* for a period of 5 years from the date of his release from prison.