

BH, you were found guilty by a jury of rape. The crime was committed on 12 May 2019 against your then wife. You were married to the complainant in 2013. She had two children to a previous relationship and you had one child together born in January 2018. For some time your relationship with your wife had been strained. From about February 2019 you had been sleeping in the shed in the back yard of the house in the town near Hobart in which you had been living together. Although you were sleeping in the shed, you were still eating and toileting in the house, and you continued to have contact with the complainant and your son.

Although it is for me to determine the factual basis of sentence, it follows from the verdict, and the issues and evidence at the trial, that the jury must have been satisfied beyond reasonable doubt of the truth of the evidence of the complainant. 12 May 2019 was Mothers' Day. She had spent time with her three children before returning her older sons to the care of their father later in the afternoon. She returned home to find you angry, making accusations of her infidelity and calling her names. Later, you came into the house purportedly to play with your son. You made a sexual advance to the complainant. When she rejected you, you followed her into the kitchen. You made another more physical and insistent sexual advance by holding her against the pantry wall and trying to kiss her. Again she rejected you and moved away. She gave evidence that you attempted to remove her track pants and underpants and have oral sex with her. I am not satisfied beyond reasonable doubt that this occurred, but it makes no difference. I am satisfied that you made persistent aggressive sexual advances to her and that she clearly rejected them by telling you that she did not want sex and by moving away. You did not. Instead, you pushed her against the kitchen bench with the front of her body facing the bench. Having removed her track pants and underpants, you, from behind, penetrated her vagina with your penis. You held her against the bench and continued with the sexual intercourse until you ejaculated. While this occurred you physically overcame her attempts to push you away, and you ignored her crying and her pleas for you to stop. When you let her go she went to the bathroom to clean herself.

At the trial, you gave evidence that the complainant consented to intercourse, or, by inference, that you held a genuine and honest belief that she was consenting. It follows from the verdict that the jury rejected your account, and was satisfied that the complainant did not consent and that you did not hold an honest and reasonable belief that she did. I am satisfied beyond reasonable doubt that you knew that she was not consenting. I am so satisfied, as I think the jury must have been, because I regard the complainant's evidence as compelling, and strongly supported by the evidence of the messages you sent her immediately prior to the crime, and to the phone conversation you had with her on the following day. Despite your own admissions of repeated infidelity, I am satisfied that the evidence demonstrates that this crime was a manifestation of your continuing intent to exercise dominance and control over the complainant.

You are 35. You have no prior convictions of much relevance. You have a poor traffic record. In 2011 you were given a suspended sentence for cultivating cannabis. In 2012 you were given a short suspended sentence for some firearm offences. Neither suspended sentence was breached. You come from a stable family and since leaving school you have been highly industrious. For ten years or so until a short time before the trial you owned and operated a successful business in the building trades. The business became your share of the property and financial division on the end of your marriage. You had two employees. As a result of this crime, that is lost. You have a new partner who attests that you have been very supportive of

her in various aspects of her life. References from other family members and a business associate attest to the high regard with which you are held. You have a son from a previous relationship with special needs. The loss of the emotional and financial support which you provided for him will be very difficult. It is unhappily the case that a sentence of imprisonment will often impose hardship upon the dependants of a convicted person. That is part of the price to be paid for serious crime and cannot affect the need to impose what is otherwise the right sentence. I accept that means that imprisonment may weigh harder on you than most, but it is not a factor of significant weight. You have a disc condition in your spine which may cause some physical difficulty for you in prison, but again it is not a factor of significant weight and I see no reason to conclude that the treatment you require, short of surgery, will not be available to you within the prison system.

Rape is serious crime. You used force to achieve your aim, but, over and above that, the crime involves the violence inherent in the bodily invasion of another person. You, in a humiliating and demeaning way, subjected the complainant to your will. It is a family violence offence. The seriousness of violence, especially sexual violence, within relationships has been repeatedly emphasised by this Court. It is insidious and a matter of great community concern. You abused the trust inherent in domestic relationships. It is an aggravating factor that the crime was committed in the presence of your son. The damaging effect of exposure of children to violence within families is well recognised. It cannot be determined, on the information available to me, whether a child so young may have been affected, and if so to what extent, but the possibility exists. His mother gave evidence of his distress while the crime was committed. The complainant's victim impact statement describes the devastating psychological impact which the crime has had on her. She speaks of the type of impact which may be expected from crimes of this nature. She experiences vivid memories of the rape, has panic attacks, interrupted sleep, and feels very insecure in the community. Her relationships with her family are affected and she understandably fears she that will never be able to form relationships or even close friendships with other men.

You are not to be punished for the fact that you have exercised your right to a trial, nor anything else that is concerned with your response to the crime. However you are not entitled to any mitigation that would normally flow from a plea of guilty and an early admission of guilt.

I am asked to make a family violence order to protect the complainant and her children. I will do so. I was concerned about the extent to which contact between you and your son with the complainant should be limited, but I am informed that a Family Court order indefinitely prohibits contact in any event. 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 do not think that the risk is great, but I am not satisfied that there is not a risk in a real sense. Accordingly, I must make an order. Because of the need for punishment, vindication of the victim, denunciation of your conduct, and general deterrence, the only appropriate sentence is one of imprisonment. I will allow for the need to ensure that you have the ability to rehabilitate by allowing for your release on parole at the earliest time.

BH, you are convicted. I direct that the offence be recorded on your criminal record as a family violence offence. I order that your name be placed on the register pursuant to the *Community Protection (Offender Reporting) Act* and that you comply with the reporting obligations under that Act for a period of four years from your release from prison. I make a family violence order to remain in force for five years from today in terms of the family violence order made

10 October 2019 except that reference to the first specified address in paragraphs 4, 5 and 6 is substituted by a different address. The full terms of the amended order will be specified in the order you will be given. You are sentenced to imprisonment for four years from 30 March 2021, the day you were remanded in custody. I order that you not be eligible for parole until you have served half of that term.