

STATE OF TASMANIA v RONALD ATHOL KEATING
COMMENTS ON PASSING SENTENCE

28 OCTOBER 2021
WOOD J

Ronald Athol Keating has pleaded guilty to one count of aggravated assault and one count of attempted rape. He has also pleaded guilty to a summary offence of common assault which shall be mentioned later in these comments.

During the afternoon on 31 July 2020 the complainant, a woman in her mid-60's parked her vehicle on William Street, in Devonport and went into a newsagency. She has a medical condition, pulmonary fibrosis and decreased lung capacity. She returned to her car and sat in the driver's seat, allowing a car to go past. As she waited she noticed the defendant standing nearby fondling his genitals through his clothing. Her attention was directed elsewhere and the defendant approached her car on the driver's side and pulled open the driver's door. The complainant grabbed the door and attempted to shut it, but the defendant opened the door fully.

The complainant screamed for help and the defendant punched the complainant to the right side of her face, in the area of her cheekbone. She felt dazed. This conduct gives rise to the crime of aggravated assault. He punched her with the intent of committing the crime of rape.

The defendant entered the car, with one foot remaining outside the car, he faced the complainant whilst she was in the driver's seat. He pushed her back into the seat and pulled up her dress. He pulled at the gusset of her stockings attempting to rip them and tried to prise her legs apart. As he did these things, his hand made contact with the area of her vagina and genitalia over her clothing. The complainant tried to push the defendant off but her right hand was trapped and she was not able to. She continued to scream and yell for help.

The defendant thrust his crotch against the complainant's torso, first in the area of her stomach and then the area of her breasts. He did so quickly and with significant force. She could feel he had an erection. He started to use his arms to hold near her neck and throat. The complainant felt that she was not getting enough air and began to feel dizzy. She continued trying to scream.

The defendant appeared to lean toward the passenger door as if he was trying to lock the door and the complainant punched his hand away. She was able to free her right hand and managed to reach the car horn behind the defendant. She began to beep the horn, for long periods. The defendant persisted with the thrusting motion against the complainant's torso, undeterred by the beeping of the horn.

The complainant's screams and the beeping of the horn began to attract the attention of passers-by. Ms Bowerman, was sitting in a nearby café and she went to the car and opened the passenger side door and got into the car. The defendant was sitting on top of the complainant, his left arm was around her neck and his right forearm was pressed to the front of her neck. He was touching the complainant's chest near her breasts with his hand. The complainant was screaming and hysterical and trying to fight the defendant off.

Ms Bowerman tried to grab the defendant's hand and move him but he was too strong. She punched the defendant to the side of the head, which appeared to startle him.

Two other members of the public, Ms Mobrici and Ms Creely had been walking together nearby when they heard screams and the car horn. They approached the driver's side of the car and started yelling at the defendant, telling him to "get off her". They grabbed the back of his shirt

and pulled him from the complainant. As they did so, he continued to thrust his hips toward the complainant.

Once the defendant was out of the car Ms Mobrici and Ms Creely confronted him, telling him "you can't do this". He responded saying "I'm not well".

The complainant was struggling for breath. The two women assisted her from the car, she was limp, upset and shaken. A member of the public followed the defendant as he walked away, the police were called and the defendant was arrested. He participated in a video recorded interview. He frankly admitted his conduct, including that he tried to have sex with the complainant, she was saying no and she screamed and he admitted that he kept going. He said to police that he understood that what he was trying to do was wrong, and he thought the complainant would have felt scared.

Initially, the defendant was granted bail subject to strict conditions. His circumstances were that he lived in supported accommodation. On 10 August 2020 he was remanded in custody having breached his bail conditions.

The complainant was taken to hospital after the incident and seen in the Emergency Department, presenting as distressed and tearful. She was prescribed a sedative and referred to support services.

The complainant has provided a victim impact statement. She has been deeply affected by the crime. She was someone who was confident, independent and self-assured. Now, she is someone who is fearful, stressed and vigilant and the impact is felt by her on a daily and constant basis. The deleterious effect of the crime is particularly profound because she has a terminal illness. Her plans to make the most of her limited time have been overshadowed by the trauma she has been subjected to.

The members of the public who intervened have been affected, they found the incident disturbing and distressing.

Earlier on the same day as the commission of these crimes, the defendant had committed a common assault. He assaulted Mr Van Essen, a man in his mid 40's and a disability carer in the employ of Leap Occupational Therapy. The defendant was then receiving one to one live in support and care from that organisation. They were at the defendant's residence in Devonport and the defendant became agitated. He threatened the complainant with a butter knife, holding it up approximately an arm's length from Mr Van Essen. When Mr Van Essen backed away, the defendant then demonstrated a sawing action across his own wrists. Mr Van Essen retreated and contacted police. The defendant was verbally threatening and said to Mr Van Essen, "if I had a gun I would shoot you" and "I will kick your car in". Police arrived and spoke with the defendant. Afterwards, the defendant left his residence and committed the indictable crimes that I have referred to.

The defendant is 55 years of age. He has prior convictions of relevance. He committed assaults in 1995 and 1996. Two assaults in 1997, one in 1998 as well as a breach of restraint order resulted in a hospital order. One of those involved an assault upon a woman in the street and the breach of a restraint order involved stalking a female. He has two convictions for threatening a female police officer committed on 10 August 2020, (committed after the crimes before the Court for sentencing today), and also contravening conditions of his bail. He was

convicted and fined for these offences. Later, when in custody in January this year, he assaulted a prison guard, a public officer, by punching him to the chest and was sentenced in the magistrates court to seven days' imprisonment.

Mr Keating has complex and wide ranging needs arising from a disability and trauma history. He has an intellectual disability, well-documented and confirmed by psychological testing conducted by Mr Damien Minehan in November 2020. His full scale IQ of 53 places him in the "extremely low" range of intellectual function. He has been assessed by consultant forensic psychiatrist Dr Patchett for the purpose of these proceedings, and he has noted there is no history of symptoms of mental illness and in his opinion the defendant is not suffering from a mental illness. I have the benefit of reports from Dr Patchett including a comprehensive report of 17 August 2021, which reviews file and background information as well as assessing his current condition. I note that Dr Patchett has delegated authority from the Chief Forensic Psychiatrist. Mr Minehan's report of 31 March 2021 addresses the Verdins principles and also includes significant background material.

Mr Keating grew up in a family of six children in the care of both parents. At 16 years of age he was admitted to the Royal Derwent Hospital/Willow Court with his two brothers. There was no evidence then of a mental illness. He remained in that institution until its closure when he was 35 years of age, during which time there were some unsuccessful attempts to reintegrate him into the community. This period of institutionalisation resulted in emotional deprivation and he was subjected to significant trauma. During this period, he exhibited various concerning behaviours involving episodes of aggressive and violent conduct. These went unaddressed and he did not receive the treatment or support he required. Instead, he was medicated including with antipsychotic and a mood stabiliser for "behavioural management".

Following the closure of Willow Court, he was referred to the adult community health service and moved into a group home environment. There was a notable decline in his behaviour which coincided with changes to his medication.

Mr Keating was assessed by Dr Peter Wurth in July 2001. Dr Wurth noted his intellectual disability and a long history of being volatile, angry and assaultive, commonly against women, but it was not clear whether these were specifically sexual assaults. Mr Keating's responses were described as quite paranoid. Dr Wurth reinforced the need to gradually reduce and cease antipsychotic medication. Dr Wurth concluded, in accordance with the views of other clinicians at that time:

"He's extremely interpersonally sensitive, has a paranoid response in circumstances that would not warrant this, and is certainly very impulsive. He readily perceives rejection where there is no evidence this has occurred. He misinterprets friendliness as affection or sexual interest, and some of his assaults on women may have been motivated by perceived subsequent loss of the interest he had assumed."

Mr Keating relocated to the north west coast in 2006. There was noted to be a continuation of problem sexual behaviours, aggression and violence which precluded his participation in community programs. There were also periods when he reported suicidal ideation, made self-harm threats, and when there were multiple presentations to the Emergency Department and referrals to the crisis team.

At the time of his offending in July 2020 he was living in supported accommodation with 24 hour staffing and overnight support. His needs had been assessed and the care and support he was receiving was funded by the National Disability Insurance Service. He was supported for most daily activities. Mr Keating has a very supportive brother who lives in Victoria who had purchased the house that the defendant was living in at that time.

Since being remanded in custody, Mr Keating has spent some time at the Wilfred Lopes Centre which he found settling. His medications began to be reduced. He has responded well to firm boundaries and clear expectations of behaviour in the Centre. He has though, displayed poor socialisation consistent with past behaviours. There have been some impulsive aggressive outbursts.

He is presently being housed at the high needs Mersey Unit. He is receiving anger management therapy and Mr Keating is finding this helpful.

Dr Patchett, in his concluding comments in the report that I have mentioned, notes that Mr Keating displays impulsivity, aggressive outbursts, emotional dysregulation, sexually disinhibited behaviour, interpersonal sensitivity and poor frustration tolerance. Dr Patchett says these are not "unexpected consequences of his intellectual deficits, reported emotional deprivation and inconsistent parenting during his early upbringing and long-term institutionalisation ...".

Mr Minehan notes a causal link between Mr Keating's intellectual disability and reduced cognitive capacity and the offending. Mr Minehan notes long standing issues with regulating emotions and controlling impulses as well as significant issues with controlling sexual impulses and behaviours. Mr Minehan explains that Mr Keating has fewer cognitive resources to draw upon to regulate his behaviour and his intellectual disability impacts his ability to learn and apply strategies to regulate these impulses and behaviours. Mr Minehan states "Mr Keating's intellectual disability has had a very significant impact on his ability to exercise appropriate judgement, inhibit his behaviour and to fully understand, at a deeper level, the full impact and wrongfulness of his behaviour in committing the offence." He further states that Mr Keating also experiences difficulty within the prison environment, and a lengthy prison sentence may weigh more heavily and have an adverse effect upon him.

Dr Patchett explains that the treatment Mr Keating should have received much earlier in his life would have entailed a behavioural support plan and reward-based recovery plan with resocialisation, and education into appropriate sexual behaviours and social inclusion. Dr Patchett notes that these measures can still be instituted with a well-constructed behavioural support plan and intensive community supports.

In a report of 15 September 2021 Dr Patchett elaborates on this recommendation:

"In order for Mr Keating to live and function safely in the community, while ensuring public safety, he requires two broad areas of inputs: 24 hour one to one supervised accommodation; and specialised recovery based psychosocial interventions which ideally would entail high level expertise and oversight of a comprehensive behaviour support plan over a long period of time.

While Mr Keating is currently in receipt of a comprehensive NDIS funding package, it does not include the high-level of supervision and behavioural support that he

requires. Unfortunately, the kind of specialised supervision, accommodation and 'treatment' needs he requires are not readily available amongst NDIS funded service providers currently available in Tasmania. I believe Mr Keating's return to the community, whether the Court is considering a community based sentence, and/or on ultimate release, will require detailed planning and sourcing of accommodation and specialised care providers."

It is expected that accommodation, and support needs for Mr Keating will be reassessed by NDIS as his release date approaches. It is understood that the prison service will work closely with NDIS, Disability Support Services, and Mr Keating's family to develop post release plans. It is likely that he will be assessed as needing purpose-built, secure accommodation, making provision for the safety needs of staff and two to one constant support. Once there has been this assessment, the engagement of community corrections and planning by other potential services, including specialised providers, can begin to occur.

Community Corrections notes that the defendant will need the involvement of a multi-disciplinary team and recommends he receive specialist sex offender behaviour management intervention. This is available in prison but Dr Patchett notes that unfortunately in Tasmania there is no community based specialised sex offender treatment that caters for the supervision and psychosocial support of serious sex offenders.

Community corrections would be available in a coordinating role. That is to coordinate services before and post release from prison.

The crimes of attempted rape, and aggravated assault are serious. These are particularly so. There were aggravating circumstances, the complainant was physically vulnerable, and the defendant subjected her to acts of violence in addition to physical force. It was determined and purposeful conduct from the moment he forced his way into her vehicle. His level of disinhibition, determination, aggression and lack of regard for the distress of the complainant, and his non-responsiveness to intervention by members of the public are highly concerning features of his conduct. The defendant subjected the complainant to a terrifying ordeal and he has profoundly harmed her quality of life.

I also though take into account that the defendant has not been involved in serious criminal behaviour like this before. He has expressed to his counsel remorse as well as insight and he has said that he knows it was the wrong thing to do. He has pleaded guilty and was frank with police. As I have explained, his moral culpability is reduced. It is relevant that he is motivated to engage in therapy for his difficulties. The sentence should be ameliorated to an extent, but there are other factors which need to be reflected in the sentence, in particular a most important goal of protection of the public, and hand in hand with that goal, is rehabilitation. There is a need for personal deterrence, to reinforce to the defendant the seriousness of his conduct. There is a concern about the corrupting influences of the prison environment, and the defendant's vulnerability to those influences. General deterrence remains a factor but it is not as prominent as in other cases. Essentially an individualised approach is appropriate so that the sentence is tailored to his personal circumstances, but given all that I have referred to, this does not result in a lenient approach.

Mr Keating, I record convictions. For the crime of attempted rape and aggravated assault I impose three and a half years' imprisonment which commences on 17 August 2020. I suspend

a short period of four months of that sentence. So that leaves a balance of three years and two months, and in relation to that I impose a non-parole period of 20 months. I record a conviction for the offence of common assault. Eligibility for parole and a short suspended term are seen as providing incentives to comply with conditions to promote reform and also seen as protective of the community.

In relation to that period of four months' suspended imprisonment, that period is suspended on the following conditions:

- You must not commit any offences that could attract a period of imprisonment for two years from the date of your release from prison.

And the following conditions apply for the same period of two years from release:

- You must report within one clear day of your release from prison to 114 Bathurst Street Hobart, the office of Community Corrections, but you must do so in the company of your disability worker or support worker allocated by the service provider nominated by NDIS.
- You must submit to supervision of that probation officer as required noting that Community Corrections will have a role as responsible for co-ordinating services.
- You must report as required.
- You must not leave or stay outside Tasmania without the permission of a probation officer.
- You must comply with reasonable and lawful directions given by a probation officer.
- You must notify a probation officer of any change of address before or within 2 working days after the change.
- You must comply with directions given by a probation officer in relation to complying with:
 - A comprehensive behaviour support plan as recommended by Dr Patchett in his reports of 17 August 2021 and 15 September 2021; and
 - Supervision by NDIS service providers and staff, disability support services and intensive community supports as recommended by your treating health professionals and service providers.

It is ordered that the Registrar place the name of the defendant on the community protection offender register, and that he comply with the reporting obligations under the *Community Protection (Offender Reporting) Act* for a period of 10 years from his release.