

STATE OF TASMANIA v DJRS
COMMENTS ON PASSING SENTENCE

3 MARCH 2022
JAGO J

DJRS has pleaded guilty to 12 counts of rape encompassed by 5 acts of penile penetration of the vagina, 5 acts of digital penetration of the vagina and 2 acts of digital penetration of the anus. The rapes occurred during five separate incidents of sexual assault. The victim of the crimes was the defendant's then partner. The defendant and the complainant had been in a relationship between February 2019 and February 2021. The defendant was 18 at the commencement of the relationship. The complainant was approximately four and a half years older than the defendant. The complainant had two children to previous relationships. Those children lived predominately with their respective fathers' but the complainant had occasional weekend contact with the children. The relationship was an unstable one and there had been periods of separation throughout the relationship. Throughout the first few months of the relationship the defendant and complainant had maintained a consensual sexual relationship, but that became intermittent and irregular when the complainant came to believe on two separate occasions that the defendant had been unfaithful. The complainant did not use contraceptive during her relationship with the accused. She had requested the defendant wear a condom but he never did. The first two counts of rape occurred in approximately July 2019, when the defendant was 18. The defendant and complainant were living together. The complainant had gone to bed and was asleep. She was sleeping on her stomach. She awoke to feeling pain in her vagina and the defendant getting off her back. She then noticed her pants and underwear had been removed. She felt something running down her leg and asked the defendant if he had ejaculated. The defendant replied "yes, I'm sorry". The complainant cleaned herself. She was upset and crying. This rape resulted in the complainant becoming pregnant. She was not happy about the pregnancy and reluctant to have the child, but was scared to raise her reluctance with the defendant. Ultimately, she and the defendant decided they would continue with the pregnancy. That child was born in April 2020. When interviewed about these matters on 20 February 2021, the defendant made substantial admissions providing details that went beyond the complainant's recall. As to this first incident the defendant agreed it had occurred. He said he had penetrated the complainant's vagina with his finger and then with his penis. He said when the complainant woke up "she did say stop a couple of times but I didn't listen". The defendant's admissions gave rise to count 1 on the indictment. The complainant was unaware this digital penetration had occurred. The defendant agreed the child was conceived as a consequence of the rape. The defendant said that after the incident both he and

the complainant went outside for a cigarette. She asked him why he had done it and he said he did not know. He said he knew it was the wrong thing to do at the time.

Counts 3 and 4 on the indictment occurred in August 2019 when the defendant was 18. He and the complainant were living together. The complainant did not recall these incidents when making her complaint to police. The State's prosecution is based entirely upon the defendant's admissions. The defendant said in his interview that he and the complainant were sleeping on a mattress in the lounge room. They had had an argument before bed, and had not resolved it before going to sleep. He said he recalled waking up at about 3.20am and going to the bathroom. Upon his return he pulled the complainant's pyjama pants down, penetrated her vagina with his finger and then penetrated her vagina with his penis. He said the complainant woke up after about 5 to 10 minutes and asked him to stop and he did so. He said he did not ejaculate. He said after this sexual assault the complainant asked him why he had done it and he told her that he did not know and apologised to her. The complainant was pregnant at the time of these rapes being committed.

Counts 5 and 6 on the indictment occurred in November 2020 when the complainant and defendant were living together in a unit. The defendant was 19. The complainant had fallen asleep whilst playing a Playstation. Whilst she was asleep, the defendant removed her clothing, penetrated her vagina with his fingers and then inserted his penis into her vagina. He said he had his penis inside her vagina for about 20 minutes, before the complainant woke up, told him to stop and he did. The defendant said he was not wearing a condom and denied ejaculating. The defendant said after the sexual assault he and the complainant went outside for a cigarette and she again asked him why he did it. He said he did not know and apologised to the complainant for his behaviour. The defendant's admissions gave rise to both count 5 and count 6 on the indictment, as although the complainant awoke to find the defendant on top of her she was uncertain as to whether any penetration had occurred.

Counts 7, 8 and 9 on the indictment occurred on 16 February 2021. The defendant was by this time 20 years of age. The complainant had fallen asleep on a mattress in the lounge room. The accused had been out and when he returned home went to bed with her on the same mattress. He woke throughout the night and went to the bathroom. Upon his return, he pulled the complainant's pants down and inserted his fingers into her vagina. The complainant awoke to the defendant inserting his penis into her vagina and inserting his thumb into her anus. She

pushed the defendant away, but he rolled her onto her side and continued to have penile sexual intercourse with her until he ejaculated. The sexual intercourse occurred in circumstances where the defendant knew the complainant was not consenting despite her not overtly resisting. In his interview the defendant said he "helped himself". He admitted he inserted his finger into her vagina, inserted his finger into her anus and then put his penis into her vagina. He said the complainant woke up and "didn't say stop, she kept going with it". He accepted however that he did not have her consent. Again following this sexual assault the defendant said he and the complainant went outside for a cigarette, she asked him why he had done it, he replied he did not know and apologised to her. The defendant's admissions gave rise to count 7 on the indictment. The complainant was unaware this digital penetration had occurred.

Count 10, 11 and 12 on the indictment occurred in the early hours of 18 February 2021. The complainant had fallen asleep on a mattress on the floor of the lounge room. When she had fallen asleep the defendant was seated in an armchair, and the defendant's brother was on a couch in the lounge room. The complainant awoke to feeling a sharp pain in her vagina. The defendant was on top of her and had just finished having sexual intercourse with her. He had ejaculated. The defendant's brother was no longer in the lounge room. In his interview, the defendant agreed this incident occurred. He said whilst the complainant was asleep he had penetrated her vagina with his finger, penetrated her anus with his finger, and had penile sexual intercourse with her. Again, during his interview he described his behaviour as "I helped myself". He said following this sexual assault he and the complainant argued. The next day he was at a friend's house when his step-father arrived and challenged him about his behaviour towards the complainant. The defendant's admissions gave rise to count 10 and 12 on the indictment. The complainant was unaware of either of these acts of digital penetration.

These crimes were reported to police on 19 February 2021. The defendant as I have noted was interviewed on 20 February 2021, and he made significant admissions, without which several of the counts on the indictment may not have been prosecuted. In addition to the admissions relevant to the individual counts which I have already referenced, the defendant also said during his interview "I have no idea why I have done any of them". He said he did not like having sex with the complainant whilst she was asleep and "hates" himself for doing it. He said he felt disgusted in himself. He said he was usually medicated for attention deficit disorder but had not been taking his medication in more recent times. He said without it he "*honestly can't*

control myself... I get nasty ... and have quite an attitude with my family, even some of my friends". He also said he had spoken with his general practitioner about his behaviour in, I infer, an endeavour to understand it.

I have regard to the complainant's victim impact statement. It discloses she has suffered traumatic psychological effects as a consequence of these crimes. Such an impact is likely to be long lasting and life-changing. She describes feeling very conflicted, given a child was born as a consequence of a pregnancy following one of the rapes. She is experiencing nightmares, panic attacks, anxiety, loss of self-esteem and considerable self-doubt and blame. Her children are also affected as she often feels unable to cope. The consequences of these crimes upon her have been profound. She has been diagnosed with post-traumatic stress disorder. The healing process is likely to be very long and arduous and perhaps unattainable one.

The defendant is now 21. He was 18, 19 and 20 when the crimes were committed. He had a most difficult upbringing. His parents separated when he was two, as a consequence of significant family violence. Thereafter, the defendant had very limited contact with his father. He maintained a good relationship with his mother with whom he lived. When he was seven he was the victim of serious sexual abuse at the hands of an older male family friend. It went on for a period of approximately four years. The matter was reported. The perpetrator of the abuse suicided following the complaint being made. The sexual abuse has had a significant impact upon the defendant's life. It has left him traumatised, angry and confused. The defendant was able to complete year 12 in his schooling, but found it difficult. He has some learning difficulties and has been assessed as having an IQ of 84, which is below average intelligence, but not significantly so. He has also struggled with the effects of his attention deficit disorder. To his credit, he has always been able to secure and maintain employment in various labouring positions and was employed up until going into custody. The defendant is deeply ashamed about his behaviour. He struggles to explain or understand why it happened. The complainant has continued to receive support from the defendant's family, in particular his mother, and the defendant is supportive and grateful that the complainant is receiving this ongoing support. The defendant has no relevant prior criminal history. In November 2021, he was convicted of two counts of breaching a police family violence order issued for the protection of the complainant. Both of those offences occurred after this matter had been reported. I do not know whether they were related. In any event, they are not prior convictions for sentencing purposes.

The defendant pleaded guilty at an early opportunity. He co-operated fully with police during the interview and made substantial admissions. The State were advised on 8 July 2021, before the matter was committed to this court, that it would not be a trial. The complainant has known from an early point that she would not be exposed to the trauma of having to recount events and give evidence. I am told that there was a delay in the State being able to prepare the statement of facts. The defendant has experienced apprehension and anxiety waiting for the sentencing hearing, knowing that the inevitable outcome was a period of imprisonment. In my view, the defendant's admissions and pleas of guilty have mitigatory value for the following reasons:

- But for the defendant's admissions it is likely up to 8 of the 12 counts on the indictment would not have been prosecuted and the complainant would have been denied the opportunity to understand the full gravity of the violations that were perpetrated against her. Moreover, the admissions are reflective of the defendant's remorse, insight and acceptance of the wrongfulness of his behaviour. In saying this, I do not overlook the fact these crimes were committed over a two year period. After each incident of sexual assault the defendant must have appreciated the iniquity of his behaviour, albeit that appreciation was informed initially at least, by the maturity, judgement and insight of an 18 year old. There is nothing to suggest however that generally the defendant did not appreciate the nature, seriousness and potential consequences of his criminal behaviour. He had ample opportunity to reflect on his behaviour. The repetition of the crimes over a two year period reduces the weight that can be attributed to remorse, but does not in my view, given the extent of the admissions made, extinguish it.
- The complaint has been saved the ordeal of giving evidence and has not suffered any compounding trauma flowing from re-living the events. The admissions and pleas of guilty provide the complainant with some level of vindication.
- Additionally the plea of guilty facilitates the administration of justice particularly at present when the COVID-19 pandemic is still causing considerable disruption and delay within our Court. It is also relevant, in my view, that the defendant pleaded guilty, knowing the inevitable outcome was a period of imprisonment, at a time when imprisonment is particularly harsh. It is notoriously understood that the prison is experiencing frequent and lengthy lockdowns. Rehabilitation programs are not being delivered because of these lockdowns. That is relevant because as a still relatively young man, who has committed very serious crimes, the defendant is unlikely to be afforded, initially at least, the benefit

of any rehabilitative programs. Such circumstances impose an additional hardship upon prisoners. A prison sentence in the current climate has a greater punitive aspect associated with it, than one served when such restrictions are not in place, although of course it is impossible for the Court to know for how long such conditions may prevail.

Rape is a grave and inherently violent crime. I note here there was no physical violence above and beyond that associated with the act itself and the complainant suffered no physical injury, but there are a number of aspects of the defendant's criminal conduct that are most serious. The repetition of the crimes is an obvious one. All of the acts of penile penetration were without protection and on a number of occasions the defendant ejaculated. The complainant became pregnant as a consequence of an act of rape. That is a significantly aggravating factor. The defendant displayed considerable disrespect for the complainant's physical integrity and autonomy and selfishly put his own desire for sexual gratification ahead of the wishes and dignity of his partner. Penetration was repeatedly affected whilst the complainant was asleep, and completely vulnerable. On some occasions when she awoke and vocalised her lack of consent, the defendant stopped. On other occasions however, he continued despite knowing she was not consenting. The continuation of intercourse in such circumstances must have been distressing for the complainant. Each act constituted a serious breach of the trust inherent in the intimate relationship.

I also note that in respect to count 1 and 2 on the indictment, there were children present in the house, the complainant's children were visiting for a contact weekend. There is no suggestion any criminal behaviour occurred in their presence. Nevertheless there is always a risk that children may be exposed to such criminal behaviour, and if children are in a position whereby they see or hear the criminal conduct, there is potential for harm. Moreover, it can exacerbate the trauma experienced by the complainant if she is fearful the children may be exposed to the conduct. As noted though, there is no evidence the children were in the same part of the house when any of the criminal conduct occurred or were indeed aware of its occurrence.

A further matter of relevance in sentencing is the defendant's age. As noted these crimes occurred when he was aged 18 to 20. He is now 21. He remains a relatively young man. As a young offender rehabilitation remains an important sentencing consideration. It is generally understood however that in circumstances where young offenders commit very serious crimes such as these, other sentencing considerations such as personal and general deterrence and the

need for vindication of the victim, relegate rehabilitation to a less significant position in the sentencing exercise. In my view an appropriate sentencing response here recognises the need to impose a sentence of sufficient severity to meet the demand for general deterrence, personal deterrence, denunciation of the crimes and vindication of the victim, whilst also acknowledging the defendant's age and level of maturity when these crimes were committed. I will also bear in mind principles of totality, particularly because of the defendant's still young age. The overall sentence must not be unduly crushing, so as to extinguish the hope for a positive future, but equally the defendant is to be sentenced for very serious criminal conduct and the sentence must respond proportionately to the totality of that conduct.

I am satisfied a heavy sentence of imprisonment is warranted in order to adequately reflect the seriousness of the crimes and the grave harm that was caused to the complainant. But for the plea of guilty and admissions, and the value that I consider those matters attract, a period of imprisonment in the realm of 10 years would have been appropriate. I am of the view however that the plea of guilty and admissions warrant a substantial reduction, and given the sexual nature of these crimes, that reduction should result in a perceptible amelioration of sentence. Because of the age of the defendant and the absence of any relevant prior convictions, I will impose the minimum non-parole period.

The orders I make are as follows:

- 1 You are convicted of the crimes to which you have pleaded guilty. I impose one sentence.
- 2 You are sentenced to a period of imprisonment of eight years and six months, backdated to commence on 14 February 2022 when you were taken into custody.
- 3 I order that you not be eligible for parole until you have served one half of the sentence.

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 entirety of the circumstances of this case I am not so satisfied and accordingly I make an order. 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 5 years from the date of your release from prison.