

Mr C, you have been found guilty of one count of rape. The jury clearly accepted the complainant as a truthful and honest witness, and rejected your evidence. I agree with the jury about this. I am satisfied beyond reasonable doubt that the complainant provided in evidence an accurate version of the events surrounding the crime, and will proceed on that factual basis for the purpose of assessing sentence.

You committed this crime in August 1993, just over a week before your 18th birthday. The complainant was also 17 years of age. You did not know each other, but on the night in question, you both attended the same party. The complainant left early but returned shortly after because she had left her house keys behind. These had somehow come into your possession. When she returned, you refused to give them back to her and used them to lure her outside the unit where the party was being held. When you were both on the front lawn of a neighbouring house, you stopped and told her that you wanted sex. She refused and demanded the return of her keys. You said to her [I quote from her evidence] "No one says no to me". You then brutally assaulted her. This included forcing her to the ground, kicking her in the head and then placing your hand around her mouth and neck and pulling her head backwards from behind, which restricted her breathing. Then, while she was lying on the ground, injured and bleeding as a result of this assault, you removed her lower clothing and vaginally raped her. It can be inferred from the eyewitness testimony of two neighbours that this was a relatively prolonged act. It certainly caused physical pain to the complainant. She continued throughout this act to tell you to get off her and that you were hurting her, but it is clear that you ignored this. The evidence is overwhelming that you ejaculated during the rape. After committing this crime, you retained her keys and told her that you would give them back to her if she met you the following day. She agreed to this, but it is clear from her subsequent actions that she was terrified of you, had no intention of meeting you and that she only agreed to do so in order to escape from you.

A short time later, a vigilant passer-by found the complainant staggering on the side of the road, and took her home. She arrived home distraught, injured and bleeding and made an immediate complaint in relation to the rape. Police were called and she was taken to hospital, where she endured an intimate physical examination. Injuries observed at the hospital included a laceration around her lower lip, an abrasion inside her upper lip, swelling and soreness of the forehead above her left eye and the rear of her scalp, and soreness around her jaw and neck. There were grazes, bruising and grass and dirt stains on her arms and legs. The examination also located blood in the vulval area and vagina, and she experienced soreness of the vagina. Her injuries and condition are entirely consistent with her description of the violence which immediately preceded and accompanied the rape.

The evidence establishes that the complainant experienced immediate and severe psychological trauma. At the trial, her mother testified that the complainant was convinced that you were going to find and kill her, and she started sleeping on a mattress in her parents' bedroom rather than her own bedroom as a result. The complainant's impact statement makes it clear that the consequences of the trauma have been ongoing, and have had a lifelong impact on her. I will not go into the details but I am satisfied that your selfish, arrogant and violent conduct on that night has resulted in permanent and devastating consequences for this young woman. That outcome is not surprising. The consequences described by the complainant in her impact

statement are entirely consistent with the Court's understanding of the profound effect of crimes such as this.

As I have already noted, you were 17, almost 18, when you committed this crime. You are now 46 years of age. The hope of rehabilitation, a factor which is often important when sentencing a person who has committed a crime at a young age, has no relevance to your case. Prior to committing this crime, you had been dealt with as a youth for various offences and had undergone periods of supervision and probation. However, you had not previously committed a crime as serious as this. However, you have since continued to commit serious crimes throughout your adult life. Of particular concern is that your criminal record, in my view, demonstrates an ongoing propensity for criminal violence, including sexual violence against women. In 2002, you were sentenced for attempting to assault a teenage girl and assaulting a young woman by attempting to separately force each female into a car which had been stolen by you. Fortunately, each of your victims was able to escape. In 2006, you were sentenced in Queensland to imprisonment for five years for crimes which included robbery with actual violence and assault. You are, of course, currently serving a sentence of 10 years' imprisonment imposed by me in 2017 for a course of criminal conduct which commenced when you committed an armed robbery at a service station and then forced the single female attendant at the service station to come with you against her will, detained her for several hours during which you terrorised her with threatening and degrading treatment, and then eventually raped her.

At the time of sentencing in 2017 for this criminal conduct, I had the benefit of a forensic mental health report prepared by Dr Leila Kavanagh. In my sentencing comments at that time, I summarised Dr Kavanagh's findings in the following way:

"Dr Kavanagh notes in some detail various aspects of your background, including physical abuse suffered by you as a child at the hands of your alcoholic father, and the fact that you commenced living on the street at the age of 13. This is a matter to which you have referred in some detail in the course of the written submissions you have just provided to me. It is also noted that you have a lengthy history of the misuse of alcohol and drugs. Dr Kavanagh concludes that you are not suffering from mental illness but considers that you have a personality type, described as antisocial personality disorder. She notes a number of factors in your presentation which predispose you to further episodes of reactive aggression."

There is nothing in this assessment which mitigates your moral culpability for the crime that I am dealing with today. On the contrary, it suggests that your personality is, and continues to be, a risk factor in respect of your conduct, and this includes your future conduct, and hence is relevant to the need to protect the community from the risk that you will commit further offences in the future.

In my view, the crime for which you are now to be sentenced is an extremely serious example of the crime of rape. Your culpability is significantly aggravated by the violence which you used either gratuitously or to overcome the complainant's potential and actual resistance. However, I must bear in mind that while I can take that force into account when assessing the objective seriousness of the crime of rape, and your moral culpability for it, you were not actually charged with, and have not been found guilty of the associated assault. Your arrogant and violent assertion of power and dominance over the complainant on this occasion, and the degradation you subjected her to, which in my view includes that it occurred in a public place,

are particularly concerning aspects of your conduct. General deterrence, denunciation of your conduct and vindication of the complainant are important sentencing considerations. Your young age and lack of prior offending for similar conduct at the time you committed this crime, are mitigating factors, but in the light of your subsequent history, the mitigation available to you in that regard is limited. In fact, I am satisfied that your commission of this crime was an early manifestation of the criminal propensity which has been demonstrated by your subsequent conduct. It is my view, accordingly, community protection and specific deterrence are also significant sentencing factors.

The only other factor capable of mitigating sentence is totality, having regard to the sentence you are currently serving. You are not entitled to any benefit from the delay in prosecuting this matter. It is clear from the complainant's evidence that you were in fact prosecuted in a timely way, but that prosecution did not proceed to finalisation because of the complainant's inability at that time to go through the ordeal of testifying against you. I am satisfied that this inability was a direct consequence of the traumatic impact of the crime. Further, you have not demonstrated any remorse for your conduct, either at the time of the earlier proceedings or since. You are not to be punished for this but on the other hand, you cannot now claim any benefit from the delay in prosecution. You are entirely responsible not just for what you have done to this woman, but also for the predicament in which you now find yourself.

H C, you are convicted of the crime of rape and sentenced to imprisonment for a term of 4 years and 6 months. That sentence will be served cumulatively upon the sentence you are currently serving. I will allow for your early release on parole, but, given the factors I have already referred to, including the need for community protection, I think the minimum sentence actually served in prison should be a term of 3 years. Accordingly, I order that you not be eligible for release on parole until you have served 3 years of this 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. It follows from what I have already said that I am not satisfied of that matter and, accordingly, must make an order. As you are deemed to have been a child at the time you committed this crime, the maximum reporting period is 7 years and 6 months. Accordingly, 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 the maximum period of 7 years and 6 months.