

AWK, you have been found guilty by a jury of two counts of rape. These charges were found as alternative verdicts to a primary charge of persistent sexual abuse of a young person. You were found not guilty of the primary charge. It is my task to find facts for sentencing purposes consistent with the jury verdicts. I may only make findings adverse to you if satisfied beyond reasonable doubt they have been proved, and I may only make findings of fact in your favour if they are proved on the balance of probabilities.

The State assert that despite the jury verdict I should sentence on the basis that the defendant had an ongoing sexual interest in the complainant and that the two counts of rape were committed in the context of other unspecified acts of sexual abuse. The defence submit the jury verdicts are inconsistent with them being satisfied there were other unspecified acts of sexual abuse and therefore submit I should sentence on the basis that each act of rape was an isolated occurrence.

The State relied upon seven specified occasions in prosecuting the crime of persistent sexual abuse of a young person. The two crimes of rape which the jury were satisfied beyond reasonable doubt had been proved were occasion one and occasion seven. It follows from the verdict that the jury were not satisfied beyond reasonable doubt that occasions 2, 3, 4, 5 and 6 had been proven. It would be erroneous to sentence on the basis that any of those identified occasions occurred. The jury's verdict clearly negates any finding of fact that occasions 2-6 had been proven beyond reasonable doubt. The State nevertheless submit I could sentence on the basis there were ongoing acts of sexual abuse but that the jury were not satisfied of the exact occasions when the events were alleged to have occurred. I do not accept this as being consistent with the jury's verdict given the specificity which was associated with several of the other identified occasions. Many of the occasions identified as occasion 2-6 occurred in different places to occasion 1 and 7 and in different places to where the complainant gave evidence that the contextual behaviour had occurred. For example, occasion 3 was alleged to have occurred at the defendant's parent's house, occasion 4 was alleged to have occurred in the complainant's bedroom and was said to be the only incident of sexual abuse that occurred in the bedroom, occasion 5 was said to have occurred in the lounge room area and was said to be the only occasion that sexual abuse had occurred in the lounge room. Occasion 6 was said to have involved the use of sex toys and was said to be the only occasion in which this had occurred. Each of the occasions was then readily identifiable as being a specified occasion. The only conclusion consistent with the jury verdict is that the jury were not satisfied beyond reasonable doubt that these occasions had been proven. The jury verdict is simply inconsistent with an acceptance of the entirety of the complainant's evidence about what had happened in respect to the seven identified occasions.

The complainant also gave some general evidence however on the trial, admitted as context evidence. Within this evidence she alleged AWK had sexually abused her on occasions other than the seven specified occasions. She was unable to recall with any level of particularity the circumstances of those occasions. Her evidence relevant to the non-specified sexual assaults was as follows:

- "After occasion 1 we did it a few more times in the little room before moving to the shed".

- "It happened once, twice – sometimes even three times per week – in the shed...he would put his penis in my mouth and be watching pornography on his phone. It would usually start by him saying 'Let's go do the usual'."

The jury were instructed they could use this evidence as context evidence, that is part of the complainant's narrative, and were further instructed they were entitled to use the evidence as part of a tendency reasoning process. In my view, given the way the trial was conducted, it is difficult to see how they jury could have been satisfied the accused had the asserted tendency, namely a tendency to sexually assault the complainant when her mother was away from the residence and in circumstances where he would often be watching pornographic videos, and not have been satisfied beyond reasonable doubt that more than two occasions had been proven. I do not consider it is consistent with the jury verdict to sentence on the basis the asserted tendency has been proven.

The State argue that the complainant's evidence in respect to occasion seven, which she said involved the defendant pulling his pants down, sitting on the couch and saying "We're going to do the usual" makes no sense unless there had been intervening sexual assaults directed at the complainant which would explain her understanding of the instruction "We're going to do the usual". I acknowledge there is some merit in that submission, but it is difficult to rationalise how the jury, if they accepted there was intervening sexual behaviours, could not have been satisfied beyond reasonable doubt that at least one other of the identified occasions had been proven beyond reasonable doubt, given the particularity of those occasions, and the jury's entitlement to rely on tendency reasoning. Having regard to the jury's verdict I intend to proceed on the basis that the two counts of rape were isolated acts, constituted by the conduct described by the complainant. Her evidence satisfies me that at the relevant time, AMK was acting in a parental role in respect to her. He was her mother's partner and was living with the complainant in the family home. He was the father of the complainant's sister. The complainant's evidence in respect to occasion 1 was that, at a time after they moved to *address* (which was November 2013) but before her eighth birthday, the defendant asked her to go to a shed on the property under the pretence that he needed her to do something. He took her to a small darkened room, told her that he was "going to show her what she needed to do", took his pants down, grabbed his penis and placed it into her mouth, took hold of the back of her head and moved it back and forth on his penis, before removing his hand and telling her to continue. She did so for two to three minutes before the defendant told her to remove her head, he masturbated himself and ejaculated onto the ground in front of the complainant. I accept the complainant's evidence that the defendant told her not to say anything after this first incident.

In respect to occasion 7, the circumstances were quite similar. the complainant was again asked to go to the shed and help the defendant. In a different section of the same shed, the defendant sat on a couch, pulled his pants down and placed his penis into the complainant's mouth. She moved her head back and forth on his penis for two to three minutes before he told her to remove her head, masturbated himself and ejaculated in front of her. I am satisfied the defendant was watching pornography on his phone in the manner the complainant described when this occasion occurred. I found the complainant's account of occasion 7 to be both truthful and reliable.

Both acts of abuse occurred in a shed at the house in which the family was then residing. The complainant was entitled to feel safe in that house, but instead was subject to acts of sexual abuse from a man who was in the position of a step-father to her. She was 7 and 8 when the

acts of rape occurred. She was very young and very vulnerable. She was under the defendant's care, supervision and authority and he took advantage of that position to commit an exceptionally serious breach of trust. Sexual abuse of a young child by a family member involves a grave breach of trust and demands condemnation.

The *Sentencing Act* 1997, s 11A, applies to this crime. It is aggravating that at the time of the crimes the complainant was under his care, supervision and authority. It is also aggravating that she was only 7 and 8 at the time the crimes were committed. She was at a most formative and vulnerable stage of development. It is not asserted that any of the other factors of aggravation raised by s 11A apply here.

Mr K, you are now aged 33. You are in a relationship with a new partner. That relationship has been ongoing for five years. There is a child to that relationship who is aged 2 and additionally your partner has two children aged 11 and 6 who you treat as your own. You have a good employment record. When these allegations came to light, you lost your employment as a groundsman at a local high school because your working with vulnerable persons card was understandably suspended. You have since found alternate employment with a building firm. You are a builder by trade. Your income is the primary source of income for your family. It was the means by which the mortgage on the family home was paid. There is now a risk your family will lose that home. I accept the inevitable period of imprisonment will be difficult, particularly given the young age of your child and the feelings of stress and anxiety you experience as a consequence of the difficult position you have left your family in. I am also told that following the jury verdict and continuing to date, the complainant and members of the complainant's family have posted a number of derogatory comments on social media platforms directed to you and members of your family, including your partner. The public humiliation associated with such posts has been a salutary experience for you and I accept, confronting for your extended family. There is no doubt that your criminal behaviour has had, and will continue to have, a destructive effect upon your life. It is important to remember however, that it is almost inevitable that rape victims have to live with the destructive effects of this crime far beyond any period of time perpetrators serve in prison. Rape is simply a dreadful crime. It involves the ravaging of a person's bodily integrity. It is well understood that generally rape has very intense and long lasting consequences for victims. The impact of sexual crimes against children in particular is profound. It is frequently the cause of long term and serious harm which can effect victims for many, many years, in often unseen and misunderstood ways. In this case no physical harm is alleged but your crimes have inevitably given rise to psychological damage. The victim impact statement of the complainant described just the type of psychological consequences which are to be expected. She has been deeply affected by your behaviour. She has traumatic flashbacks of the abuse. She feels anxious, experiences low self-worth, shies away from affection and feels fear and isolation. She has trouble sleeping and is no longer happy. The way she views people and relationships has been adversely affected. She has struggled with depression. To be burdened with such consequences at such a young age is likely to be life changing.

There are no mitigating features in respect of the crimes you committed. You are not entitled to the mitigation a plea of guilty would have attracted. The complainant was required to give evidence and was cross-examined for a considerable period of time. It was obvious to me that she experienced anxiety and trauma as a consequence of having to recall events and give evidence about what happened to her body. You have not shown any remorse for your conduct or its effect upon your victim. To serve the sentencing aims of punishment, vindication of the

victim, community protection and specific and general deterrence, a substantial term of imprisonment must be imposed.

AWK, you are convicted of the crimes of which you have been found guilty. I will impose one sentence. You are sentenced to a term of imprisonment of 5 years & 4 months which will be backdated to commence on 17 May 2022. I order that you not be eligible for parole until you have served one half of that sentence of imprisonment.

I am not satisfied that you do not pose a risk of committing a reportable offence within the meaning of that term in the *Community Protection (Offender Reporting) Act* 2005 in the future. I make an order directing that the Registrar cause your name to be placed on the register, and that you comply with the reporting obligations under the Act for a period of 8 years from your release.