

LJK, you have been found guilty by a jury of one count of rape by digital penetration. It is my task to find facts for sentencing purpose but, in this case, the facts substantially follow the verdict. To find you guilty, the jury must have accepted both the truth and reliability of the complainant's evidence beyond reasonable doubt, and I will sentence accordingly. To the extent it is necessary to make findings of fact, I note I may only make findings adverse to you if satisfied beyond reasonable doubt they have been proved. I may only make findings of fact in your favour if they are proved on the balance of probabilities.

The complainant was, in effect, your step-daughter. You had been in a significant relationship with her mother for a number of years. The complainant lived with you and her mother during that relationship. There were two other children born to the relationship. You continued to have regular contact with your sons following separation from the complainant's mother.

Over the weekend of 28 and 29 February 2020, you had contact with your two sons. The complainant was not part of those contact arrangements, but on the evening of the 28 February, rode her scooter to the unit where you were living. You were living in that unit with your new partner and her child. She went there to see her brothers and also to exchange a console controller. She ended up staying for the night. Arrangements were made for her to sleep on the couch in the lounge room.

After your partner went to bed, you and the complainant were watching movies together on the couch. At some point, you both fell asleep. The complainant woke up to your hand on her vagina on the outside of her clothing. It is not alleged that you are criminally responsible for this act as the State accept they cannot prove beyond reasonable doubt that you were not asleep at the time the incident occurred. It is nevertheless relevant to the overall circumstances and the ordeal the complainant suffered. When the complainant woke up to your hand on her vagina area, she got up. You also woke. You asked her had she been awake. She went to the bathroom. You went outside to have a cigarette. When you returned from having a cigarette, the complainant had taken up a position on the couch. She was lying with her face facing the back of the couch. You laid on the couch behind her. You placed your arm around her waist and moved your hand towards her vagina. She tried to push your hand away. You persisted.

You were stronger than her. You placed your hand inside the shorts she was wearing, touched the outside of her vagina and then placed your finger into her vagina. The complainant felt a stinging pain. She told you to stop it and get off her. You did. You then apologised to her and asked her whether she was going to tell her mother. You hugged her and told her that you were sorry. You continued to apologise to her for some time. Eventually, you left her alone in the lounge room and went to bed with your partner. The following morning, the complainant made an excuse to depart and return to her home. She told her mother what you had done in broad terms.

In 2017 the law of rape was amended to include penetration by a body part other than a penis. Arguably, the amendment was intended to reflect the fact that all non-consensual penetrative sexual crimes are equally grave, but of course, it must be borne in mind that digital penetration does not carry with it the risk of pregnancy or sexually transmitted disease. Nevertheless, the amendment speaks, in my view, to the seriousness with which such acts must be viewed. Digital penetration involves an invasion of the body and a violation of one's bodily integrity.

The complainant was 12 years of age when you raped her. She was obviously young and at an important stage of her emotional and sexual development. Section 11A of the *Sentencing Act* applies to this crime. It is aggravating that at the time of the crime, the complainant was under your care, supervision and authority. Her young age is also an aggravating feature. You had raised the complainant as your step daughter whilst you were in a relationship with her mother. She was entitled to feel safe and secure in your care. Instead, you took advantage of the power and control you had over her to commit a very serious breach of trust. The evidence suggests you had a close relationship with the complainant. The relationship you shared with her allowed you to commit this crime. Sexual abuse of a young child by a family member involves a grave breach of trust and demands condemnation.

Your crime has had a terrible impact upon your victim. I have read her Victim Impact Statement. It is unnecessary for me to traverse all that she has outlined. It is sufficient to say she describes the type of stress, anxiety, upset, uncertainty and trauma that is, sadly, so often experienced by victims of sexual crimes. The impact of sexual crimes upon children, in particular, is often profound. It is frequently the cause of long term serious harm, which can affect victims for many years in often unseen and misunderstood ways. In this case, no physical

harm has been caused, but there is no doubt your crime has given rise to significant psychological harm.

You are 32 years of age. You were home schooled. You have held various positions of employment over the years. You have no prior convictions of a sexual nature. Generally, your prior convictions are driving related. In July 2021, you were convicted of some matters involving the breach of an Interim Family Violence Order. These are not prior convictions for sentencing purposes. It cannot be said that you have a poor criminal history. It appears this offending was out of character for you.

There are no mitigating features however in respect to this crime. 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. It is obvious from her comments in her Victim Impact Statement that the need to come to court added to her trauma. You have not shown any remorse for your conduct or its effect upon your victim. I give weight to the fact that you did desist from your sexual attack when the complainant demanded you get off her, and that the assault was relatively short-lived. Afterwards, however, you tried to manipulate the complainant by comforting and reassuring her. In my view such behaviour was directed at self-preservation and compelling her silence. Such behaviour must have added to her confusion and stress.

To serve the sentencing aims of punishment, vindication of the victim, the protection of children generally and specific and general deterrence, a period of imprisonment must be imposed.

LJK, you are convicted of the crime of which you have been found guilty. You are sentenced to a term of imprisonment of three years, which will be backdated to commence on the 20 October 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 that Act for a period of five years following your release from prison.