

Mr Braslin, a jury has found you guilty of two counts of rape. The necessary implication of the verdict is that the jury accepted the version of the complainant beyond reasonable doubt. I also found her to be a credible and reliable witness, and am satisfied beyond reasonable doubt that your conduct was as described by her. You will be sentenced on that factual basis.

The crimes were committed on 20 October 2021. Both you and the complainant were 18 years of age at that time. You had gone to school with the complainant and in those years had got on well together. In fact, when you were both about 16, you engaged in a single act of consensual sexual intercourse. However soon after this, the complainant's opinion of you declined dramatically. This was largely due to her observations concerning the way that you treated your partner at that time, who was a friend of the complainant. I accept the complainant's evidence that you had also physically assaulted her on one occasion during that period.

On the day these crimes were committed, the complainant was at her house, which she shared with another woman. You had been there earlier in the day, in company with a young male, working on a motorbike in the backyard. It is not completely clear to me why you went to that house in order to conduct this work, although the complainant did suggest that the backyard of the house at that time contained many used vehicles and there may have been an availability of spare parts. In any event, there is no suggestion in her evidence that she had invited you or that you had sought permission or even told her you were coming there. On the other hand, there is no suggestion that she objected to your presence. The impression I obtained was that she preferred simply to ignore you and have nothing to do with you.

At some point, you and the other male left the house, but you returned there in the evening, after dark. The other occupant of the house had been present earlier in the day but had left by the time of your return, and the complainant was alone in the house. There was some limited interaction between you when you requested the complainant to look for tools and she told you that there were none in the house. Shortly after this, you went into the house, and spoke to her in the lounge room where she was sitting on the couch. At this time, you made some lewd and sexually suggestive comments to her. She made it clear that she was not interested in your suggestions, and you left the house. However, you returned after a short time. When you did, you told the complainant that you wanted sex. She clearly informed you that she did not want to have sex with you, and reminded you that you were both in other relationships. You told her that you were going to have sex with her whether she wanted it or not, and irrespective of whether she said yes or no. You then held her down on a couch with your hand around her throat, while you forcibly removed her clothing. You then pinned her to the couch by holding her there by the shoulders, and vaginally raped her. She attempted to physically resist you, but you were able to overcome this resistance because of your greater size and strength. She also continued to plead with you to stop, and to tell you that she did not want to have sex with you, but you clearly were not interested in what she wanted. Her pleas had no effect on you whatsoever.

After having vaginal intercourse with her for some minutes, you placed your penis in the complainant's mouth, and continued with this form of intercourse until you ejaculated in her mouth. She immediately reacted by spitting the ejaculate at you. You left the house a short time later, but as you did so, you told the complainant that you would be returning with a 22. The complainant, understandably, took this to be a threatening reference to returning with a gun.

Whether you were intending to do this or not, the complainant's interpretation of this comment is the only rational one, and this, of course, compounded the terror and distress that she was already experiencing as a result of your crimes.

The impact of your crimes on the complainant is significant. In her evidence, she said that her immediate feeling was of disgust and she felt that she wanted to kill herself. She was scared that you would return. She has also provided me with an impact statement. In that statement she describes ongoing significant emotional and psychological impact as a result of these crimes. I do not intend to describe the details of this, but it is significant and it is entirely consistent with the courts experience of the real impact suffered by victims of sexual crime such as this. It is also consistent with the more informed understanding that the court now has as to such impact that the effects of your crimes on the complainant are likely to be long-term if not permanent.

These crimes are extremely serious. You used force to overpower the complainant and, in essence, to take what you wanted from her, without any regard to her wishes or welfare. Your actions were arrogant and cruel, and completely selfish. You did not treat her as a person, but simply used her to gratify your own sexual desires. During your commission of the second rape, in particular, you treated the complainant in a particularly humiliating and degrading way. I have no doubt that your intention in referring to the gun as you left was to threaten her, probably as a rudimentary attempt to ensure her silence. Your counsel has submitted that I should regard the absence of any further gratuitous violence as somehow lessening the seriousness of your conduct, but quite frankly, I regard the entire episode as one of serious sexual violence. The objective seriousness of the criminal conduct and your moral culpability for it is extremely high.

You are now 19 years of age. You have a lengthy and concerning history of offending as a youth with the first reported offence committed when you were 15 years of age. Since then, you have been continuously offending in a variety of ways, including offences of dishonesty, traffic breaches and drug offences. You have also been dealt with on a number of occasions for assault. It is concerning that some of your past violence has been directed against females. The criminal conduct continues into your adulthood. On 22 March 2022, you received sentences of youth detention in respect of numerous offences, some of which were committed around or subsequent to your commission of these crimes. You have been in custody in an adult prison since 28 October 2021 but you were serving the sentence imposed on 22 March 2022 until 27 March 2022.

It is clear that much if not all of your prior offending is related in some way to a significant drug problem, in particular your use of methamphetamine. However, the offending also postdates a significant head trauma suffered by you during a motor vehicle accident in 2017 when you were 13 years of age. The material provided to me establishes that you suffered a traumatic brain injury in the accident. I have been provided with reports relating to cognitive assessments, first conducted in 2017 and again in April 2021. That report was prepared for the purposes of a damages claim. The reports indicate that generally, you recovered well from the injury but there is some cognitive deficit although it is not certain whether this results from the injury or predated it. As is clear from your criminal history, your psychosocial condition is a complex one and includes problems with behavioural regulation and risk-taking behaviour. Once again, it is not clear to me whether this is something that resulted from or was exacerbated by the brain injury or simply is a fundamental part of your underlying personality and character. It is not necessary to resolve this for the purpose of this sentence, and in any event, the neuropsychologist who prepared the second report expresses the view that any neurological

recovery has probably already taken place and there will be no additional improvement in the future. What is very clear from the 2021 report is that the neuropsychologist considers that the most significant factor affecting your behaviour and capacity including in to the future is your ongoing use of methamphetamine. The report recommended methamphetamine rehabilitation and expressed the view that unless this occurred together with appropriate psychological and psychiatric support, you are "likely to become entrenched in the criminal justice system. He is also at increased risk of harming himself or somebody else". I accept this opinion. Unless and until you stop using drugs, your behaviour is not likely to improve.

The seriousness of the crimes means that general deterrence, denunciation of your conduct and vindication of the complainant are important sentencing considerations. I also think that personal deterrence is important. You have shown absolutely no remorse, and I suspect that you have little if any insight into how appallingly you have behaved on this occasion. The only significant mitigatory factor is your age. At this age, rehabilitation is obviously an important consideration, but quite frankly, it seems to me that there is little that can be done about this until you decide that you want to reform and commit yourself to that outcome. Your counsel says that you have stopped using illicit substances while you are in prison. Hopefully, for your sake, that is a sign that you are starting to want a better future for yourself. However, more is required if you are truly serious about reform. Because of the seriousness of the crimes, the balance in sentencing falls in favour of a punitive outcome. Accordingly, there must be a significant sentence of imprisonment, but I will allow for parole at an early opportunity to give the parole board the chance to permit supervised release into the community at an appropriate time, and to respond to any meaningful commitment by you to reform. I will take into account totality, and will impose a head sentence which is less than that which would have been imposed on a more mature person.

The orders I make are as follows:

- a You are convicted of the crimes of which you have been found guilty
- b You are sentenced to a global term of 4 years imprisonment, which will be backdated to 27 March 2022. You are not eligible for parole until you have served one half of that sentence.
- c In accordance with s 11(3) of the *Sentencing Act*, I identify the sentence which I would have imposed for each crime separately as follows:
 - i Count 1 - Imprisonment for 3 years
 - ii Count 2 - Imprisonment for 3 years and 6 months.
- d 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 circumstances of this case, I am not satisfied of that matter and, accordingly, must make an order. The maximum period is for the rest of your life. Because of your young age, I think that a lesser period is appropriate. 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 a period of fifteen years, to commence on your release from prison.