

After a trial a jury found JKW guilty of one count of indecent assault and three counts of rape.

He committed these crimes during the night of 15 January 2021. He was staying at a home in South Hobart with a friend, J, *[names of associates redacted and referred to by initial]* and J's family. J's family unit included his brother, B, who was 15 and two younger siblings, and his mother, Ms M. Ms M had agreed for the defendant to stay and she treated him like a son. B had a girlfriend R and she was staying in the family home as well. She was school-friends with the complainant and she asked if the complainant could stay for a sleep-over that night and permission was given. The complainant was 14 years of age and the defendant was aged 16, having turned 16 in mid-December 2020.

The complainant's mother dropped her off at the house at around midday. Her mother understood it was R's family home. The complainant had stayed with her before and told her mother that her friend had moved house to account for the different address. She told her mother that because she really wanted to spend time with her friend at a sleep-over and she knew her mother would not approve if it was the house of her friend's boyfriend. The complainant was not mindful of what would be the concerns underlying her mother's disapproval. She was naïve and unaware that she could be placing herself in a situation of risk.

The complainant, R and B kept to themselves. The defendant, J and J's girlfriend socialised as a separate group within the house. They were more sophisticated and inclined to consume alcohol and take drugs including cannabis and amphetamine.

The complainant, R and B went to the South Hobart School to wander about and play on the school equipment and when they returned, they again kept to themselves and did not interact with the defendant and his group other than incidentally. At one point the defendant and his group of three smoked cannabis on the verandah.

The complainant, R and B retired for the evening and went into B's bedroom. It hadn't been settled who was going to sleep where, but in the meantime they were on their screens on B's bed. The girls were watching "TikTok" together for a time while B watched Netflix. The bedrooms in the house were all on the second storey. Ms M came into the bedroom and said goodnight and retired to her own bedroom a little way down the corridor.

The complainant was feeling homesick and insecure and did not feel comfortable putting her pyjamas on. She fell asleep on the bed in B's bedroom, fully dressed, wearing a dressing gown over the top of her leggings and top. R and B went downstairs to the lounge room leaving the complainant alone, asleep in the bedroom.

As she slept, the defendant came into the bedroom and got into the bed beside her. She was sleeping on her side and he positioned himself behind her, on his side, and began sexually assaulting her. The complainant woke up and felt a hand on her hip and a body against her back. She felt the hand moving up to her breast under her clothing and underwear. She felt shocked and put her hand over her mouth and closed her eyes. The defendant squeezed her breast. The complainant was crying, and scared and did not know what to do. She felt the hand moving down and then moving under her pants and underwear. The defendant said to her "don't talk and don't scream". He touched the outside of her vagina, his fingers moving in

circles. The complainant did not know who it was. She was crying and her hand covered her mouth to stop herself screaming. She had not moved, as she described in her evidence she was frightened that "he had a weapon or if I did anything he would hurt me more". The complainant was terrified during this assault and the sexual attack upon her that followed.

The defendant then forcefully pushed the complainant onto her back. He pulled down her leggings and underpants and moved her legs apart. He then had vaginal intercourse with her. She could not speak or do something to try and stop him as she was too scared. She was still crying and had her hand covering her mouth. While it was dark in the bedroom there was enough light from the landing for her to see that the person was the defendant.

Then he stopped and pulled her into a more upright position. He grabbed her ponytail and twisted it around his hand and pulled her close to his penis. She still had her hand over her mouth and he tried to move it away as she was trying to keep her hand there. Then she got too scared and stopped resisting. He pulled her hand away and forced his penis into her mouth. While still having hold of her ponytail he forced her to give him oral sex. He repeatedly pushed down on her head and then pulled her head up by her pony tail.

After a short while he let go of her hair and grabbed her by her shoulders and pushed her so that she was laying on her back. He forced his penis into her vagina and had vaginal sexual intercourse with her. As that was occurring he was listening and kept stopping and looking at the door as if he could hear something. The complainant still had her hand over her mouth and had her eyes closed. There was a noise and he stopped sexual intercourse and moved away and put a sheet over the complainant. The complainant lay there very scared, as she explained in her evidence, she tried "to encourage myself to get up". Then after some minutes she found the courage and got up, put on her clothing and went downstairs to her friend. She was in a highly distressed state and told her friend she had been raped.

The defendant was told in no uncertain terms to leave the house and he fled. The complainant telephoned her mother and told her she had been raped. Her mother described how she felt, "it was your worst nightmare coming true". She immediately drove to the house and took her daughter to the Hobart Police Station. On the way, the complainant saw the defendant on foot and identified him to her mother. Her mother in a distraught state confronted him and told him to go to the police station and to face what he had done. She followed him there. Outside the police station he sat down on the footpath crying and said to the complainant's mother that he was sorry as she yelled at him.

The complainant was taken to the Royal Hobart Hospital for a medical examination. She was suffering internal pain. There was no protection used during intercourse so there was a risk of her contracting a sexually transmitted disease. She has provided a victim impact statement which reveals the profound harm she has suffered and the disruption to her life. She explains the immediate shock, fear and disbelief she felt, as she was still a young girl who was not sexually active. In the immediate aftermath, she was fearful at night and too scared to go to school. When she did go, she was bullied and terrible things were said and she would come home crying. Her mother made the decision to move interstate to give her daughter the best chance of a new life. The complainant explains, before this happened: we had a home, we had money, we had friends, and mum had a job and we were going to school. Now, her family of five share a room as her mother cannot afford a house, her mother's savings are being used up and there are times when they do not have enough money for proper meals. Very sadly, the

complainant feels guilty about what her family is going through. She must not feel in any way responsible. The defendant is entirely responsible for the impact on the complainant and her family.

The complainant feels she will never recover. She says "What he did to me that night has changed my life forever. I don't think I'll ever be a normal teenager again and I don't know what the future holds for me or my family." Psychological counselling has not helped her. She finds physical contact difficult. Regularly, she suffers from panic attacks. She struggles with friendships. She was studying nursing subjects at TAFE wanting to be a midwife, but she had to stop because of the court process and feeling so overwhelmed. The stress she suffered as a result of giving evidence was acute. It is important to acknowledge how courageous she was to give evidence given her acute distress.

The complainant's mother gave evidence and her anguish at what had happened to her daughter was palpable. She has been stricken with guilt and grief and a feeling that she has let her daughter down, as she said "you never want to see your children get hurt, you're there to protect them, ... to know they're in safe environments." She carries a burden of responsibility and yet she should not feel responsible. Teenagers need freedoms and time with friends. Because of their innocence and immaturity they will make mistakes. They should be able to learn from them without coming to harm. Again, the defendant is the only person who should feel responsibility and guilt for what happened to the complainant, what he did to her.

The defendant was spoken to by police soon afterwards, captured on their body worn camera footage, when he was in an agitated and stressed state at around 1:30am. He told police that there was some consensual sexual activity but no sexual intercourse and the complainant had accused him of rape. On 15 January, at 10:30am he was formally interviewed by police during a video interview and he admitted some sexual touching which he lied about and said was consensual. He denied having any form of sexual intercourse with the complainant. Towards the end of the interview, his mother who was present during the interview made a comment about the complainant having tests at the hospital which would show if he had had sexual intercourse with her. Evidently this caused him to rethink his answers and after the interview at the watch house he volunteered that he "*might have had sex*" with the complainant.

I have watched the interview. The defendant demonstrated no sign of remorse or regret, no sign of empathy towards the complainant, his only concern was self-preservation.

At trial, his defence was that the complainant consented, and that he held an honest and reasonable mistake of fact that she consented. His counsel cross-examined about a factual scenario involving the complainant consenting to intercourse. The jury rejected that scenario. The jury was satisfied beyond reasonable doubt that the complainant was an honest and reliable witness. I observed her to be honest and conscientious. Indeed so conscientious, that she became distressed if she thought that she had made a mistake in recounting what had happened. It was apparent that giving evidence was very difficult and stressful for the complainant.

It is plain from the verdict that the jury found that the complainant did not consent to any of the assaults and that the defendant did not have an honest and reasonable belief that she was consenting. Indeed, I find that her distress and lack of consent was obvious to the defendant at the time of his offending. Given these circumstances, his lack of remorse or regret during his police interview suggests a callous attitude at that time.

I find that during his offending he was indifferent to her distress. He saw an opportunity and regarded her as a sexual object.

At the time, he was living a selfish existence which revolved around his own desires with very little accountability for his actions. Ms M provided a roof over his head and some meals, but she had very little control over his day to day existence. He had very little guidance or supervision and had free rein in terms of alcohol consumption and drug use. His own childhood and the family environment in which he had grown up had provided him with very limited understanding of the wrongfulness of his criminal conduct. He did not receive any education at school about consent and education about such matters was not part of his moral upbringing.

These crimes occurred during a period of heavy drug use. Of course, that is no excuse at all. I have a Youth Justice report which notes that the defendant believes that his ability to read the situation was affected by his drug use but he also acknowledges that his drug use is no excuse for his conduct.

The defendant grew up in a household characterised by parental drug use, conflict and family violence. He witnessed two serious family violence episodes. He spent time living with his father when he was about 11 and was neglected in his care. He disengaged from education at the beginning of high school and that coincided with an increase in drug use. His offending began when he was 12-13 years of age and he experienced his first remand at Ashley Youth Detention Centre as a 13 year old. He received multiple periods of detention throughout his adolescence.

Community Youth Justice have had difficulty engaging with the defendant when he was in the community as he has struggled with chronic methylamphetamine and cannabis use. This has been a major factor in his offending and he is said to become transfixed on obtaining the drug when he is in the community.

His prior offending is extensive, generally involving offences of dishonesty and driving offences. He has had periods of detention imposed since committing the crimes before the Court today, for evading police and stealing and other offences. Part of the sentence was suspended and he breached that, and a further period of detention was imposed this year.

The defendant has a prior offence of assault with indecent intent committed before these crimes but which came to light afterwards. He was sentenced to a probation order for that offending in December 2021. It involved an assault of an adult complainant at the same address, commencing when she was asleep. It highlights the need for the defendant to have strong guidance and intervention regarding his personal development.

At Ashley Youth Detention Centre the defendant has been positively engaged in learning opportunities. He has worked towards completing units from the Vocational Education and Training course, Certificate 1 in skills for vocational pathways and he has worked towards completing units in a financial literacy course. He has shown qualities of sportsmanship during sport and fitness sessions and developed skills and improved his fitness. He is described as engaging well in all school programs and that he has worked hard at building respectful relationships with all staff. Importantly he enjoys these programmes. It is my assessment that he values them and I note his advocacy in highlighting the very poor education that was provided at Ashley during a period of staff shortages and the efforts he went to bring it to the attention of the responsible Minister demonstrating intelligence and initiative.

He has a long term goal to become a mechanic and he is also interested in practical work such as building or construction. I do not doubt he can achieve this goal if he sets his mind to it.

The Youth Justice report also states importantly that the defendant acknowledges the anger and hurt that has been suffered by the victim and her family. The report highlights that he has demonstrated empathy and appears to understand the gravity of the crime for the victim and her family.

He has been on remand or serving sentences at Ashley Youth Detention Centre for most of the time since these crimes were committed in January 2021. That has provided time for him to mature and develop some insight. He understands now that what he did was wrong. I accept that there has been personal development and development of insight and maturity since the police interview in January 2021 when, as noted by me, his responses suggested a callous attitude.

The defendant's youth is a significant factor which must be reflected in the sentence. He is at an age where there is an opportunity for him to reform and for positive influences to shape the person he will become and the choices he makes. In maximising his chances of reform it is critical that he addresses his drug use and have the necessary ongoing supports in the community. I also see as critical that he have continuing guidance and specialist intervention to ensure that he continues his personal development, particularly in relation to developing responsibility, empathy and respect for others.

I must decide whether to sentence the defendant under the *Youth Justice Act* 1997 or the *Sentencing Act* 1997. Under the Youth Justice Act the maximum penalty is two years detention. I consider that penalty is plainly inadequate and I will sentence him under the *Sentencing Act*.

This is very serious criminal conduct which has caused terrible harm to the complainant. They are brazen acts of violence and violation of a young victim who was entitled to be safe in the family home where she was staying. She was subjected to a terrifying experience and the impact on her is likely to be lasting. The sentence must involve heavy punishment to adequately reflect the gravity of the crimes and the harm that has been done. It is my hope that as you develop your understanding of the seriousness of your conduct, you will understand the need for this heavy sentence. There is also a strong need for general deterrence in order to protect others from such conduct. Having said that, your rehabilitation is an important sentencing objective, the Court and community want to see you reform and want to see you make the most of your life.

The sentence will also reflect your youth and your prospects and will not be as lengthy as it would have been if you were an adult offender. The non-parole period will be the minimum to encourage your efforts and if you are given the opportunity of parole, it will provide you with supervision and support in the community to promote your reform.

The crimes involve a course of conduct which warrant four years' imprisonment. In my view, a sentence of less than that would not be adequate to reflect the gravity of these crimes. I record convictions. For each crime of rape I impose 15 months' imprisonment, for the indecent assault 3 months' imprisonment. The individual crimes would have attracted a lengthier sentence if they had been committed as a single act rather than as part of a course of conduct.

The defendant is not to be eligible for parole until he has served the minimum non-parole period of one half of each of the terms of imprisonment. The effect of the sentences, the end result, is four years' imprisonment with a period of 2 years non-parole. The sentence I impose is backdated to 14 April 2022 (to take account of 222 days on remand not attributed to any other matter). The sentence I have imposed on count one, indecent assault, is backdated to 14 April 2022 and all other periods of imprisonment imposed on the indictment are cumulative thereafter.

I make an order pursuant to the *Community Protection (Offender Reporting) Act* that the Registrar cause your name to be placed on the register and that you are to comply with the reporting obligations under the Act for a period of five years. That period takes account of your youth and the maximum ceiling for your age.