

Mayar Majok, you have pleaded guilty to a charge of indecent assault. You committed this crime in the early hours of the morning of 28 July 2022. The victim of this crime was your former partner. You had lived with her in a marriage-like relationship for about five years. That relationship ended on or about 13 July 2022, roughly two weeks before the incident in question. At that time you had a job working in another State as a fly in-fly out worker. You returned to Tasmania on 27 July 2022 and arrangements were made between you and your former partner, the complainant, for you to stay at her family home. She was living with her mother, her step-father, her brother and a child of your relationship, who was then three years old. Arrangements were made for you to sleep on a couch. The complainant slept in her bedroom with the child.

After arriving at the house, you sent the complainant a long series of text messages trying to get her to have sexual intercourse with you, and she made it very clear that she was not interested. She was working on a university assignment and was absolutely unwilling to even consider having any sort of sexual contact with you. She made it clear over and over again that she was absolutely not interested. You entered her room on one occasion and she again made it clear that she was absolutely not interested. Then, at some stage in the early hours of the morning, between 2am and 5am, she woke up. She found you in bed with her. You were naked. You had your hand inside her underpants, and you were touching and rubbing both her labia and her anus. She rolled over, swore at you, pushed you away, and you immediately got off the bed and left the room. You did not do anything wrong after that, but you had committed the crime of indecent assault by touching her genitalia and her anus. To the complainant's surprise, she found semen in her bed and on her buttock after you had left. She went back to sleep.

This was a serious crime. It was committed in the complainant's own home, in her bedroom. It was abuse of the trust that had been placed in you by her, and by the other members of the household. The three-year-old child was present when you committed this crime. Fortunately, she did not wake up, but there was a risk of you waking her up.

The complainant spoke to you about what you had done the next morning. To your credit, you left the house and said that you would report yourself to the police and you did. You went to the Kingston police station and confessed to indecently assaulting your former partner. The officer that you spoke to phoned her and found out that she had just been to a different police station to report what you had done. You were charged and bailed, and a 12-month Police Family Violence Order was made. You have complied with that order. You have co-operated by returning to Tasmania from time to time for the purpose of these proceedings. While the Police Family Violence Order was in place you re-established contact with your daughter and commenced seeing her. The visits were facilitated by the complainant's mother.

You have pleaded guilty, and that counts in your favour because it has meant that your former partner has not had to give evidence against you and experience cross-examination. You pleaded guilty at a late stage. However the original charges against you were more serious. But, until apparently sometime last week, the complainant expected that she was likely to have to give evidence.

She has made it clear that she does not want you to go to prison and I can see why now that I have been told about the arrangements that you have made with her. You and she are now living under the same roof in South Australia. You are not in a sexual relationship. You are not partners. She is occupying the same residence together with the child, for the benefit of the child. After the Police Family Violence Order expired, it was lawful for this arrangement to be put in place and so you made these arrangements to promote the welfare of the child.

You are no longer a fly-in-fly-out worker. You have steady full-time employment in Adelaide. You are supporting the child and enabling the complainant to complete her university studies. She has transferred from the University of Tasmania to a university in South Australia.

This presents me with a very unusual situation for sentencing purposes. When I first looked at this file, I thought I would be sending you to prison and sentencing you to something like 18 months in prison, but there are all sorts of reasons why that is not appropriate. The fact that your former partner does not want you to go prison does not automatically mean that you will not be sent there. This was a serious crime. There were aspects of it – the presence of the child, the fact that it happened in the complainant's own home, own bedroom and own bed, and the fact that she had made it very clear that you were not welcome to begin doing what you did - all count very heavily in favour of a sentence of imprisonment. I do not have much in the way of alternatives. Because you live in South Australia, I cannot make a home detention order, and I cannot sentence you to community service. If I fine you, that will disadvantage the child. It seems to me that the only appropriate course is for me to impose a wholly suspended sentence of imprisonment. That will mark the seriousness of what you did, and wholly suspending it will put you in a position where you can expect that, if you ever do anything like this again to this woman or to anybody else, you can expect to go to gaol.

For reasons that I have discussed with Counsel, I have got to make an order putting you on the register of persons offending. I have to do that unless I am satisfied that there is no risk of you committing another reportable offence - a sexual offence, or something similar - ever again. Although you have stayed out of trouble for 14 months and made arrangements that show you are taking a very mature attitude now to your relationship with the complainant, I cannot be satisfied that there is no risk of you ever committing another offence like this, so I will have to put you on the register.

I take into account in your favour the fact that you have got no prior convictions, apart from a couple of fines imposed in relation to traffic infringement notices, which are of no significance at all, and that you were 28 when you did this and you are now 30.

I convict you and sentence you to 12 months' imprisonment, wholly suspended on condition that you commit no crime punishable by imprisonment for a period of three years. I order that this offence be recorded on your criminal record as a family violence offence. I order that the Registrar appointed under s 42 of the *Community Protection (Offender Reporting) Act 2005* place your name on the Register under that Act and that you comply with the reporting obligations under that Act for a period of three years, commencing tomorrow.