

Mr ... has pleaded guilty to five sexual crimes. The victim of all these crimes was his wife. The various sexual acts were committed when she was asleep, without her knowledge and without her consent. All of the relevant sexual acts were video recorded by Mr The recordings were subsequently discovered by his wife and her mother.

Mr ... and the complainant began living together in 2014. They were married in early 2020. They have a child who is now 6 years old.

Counts 1 and 2 on the indictment relate to an occasion when the couple, who then lived in another State, were visiting the complaint's mother in Tasmania. After giving birth, the complainant began to suffer from a medical condition which made it painful for her to have vaginal intercourse. She told Mr ... that she was agreeable to him masturbating in the bed next to her when she was asleep, but she did not ever consent to him touching her in any sexual manner while she was asleep.

Video footage from October 2015 depicts the complainant sleeping in a guest room at her mother's home, with Mr ... in the bed with her and awake. Whilst filming her, he licked her anus and subsequently inserted a finger into her anus. In respect of those acts, he has pleaded to guilty to charges of indecent assault and aggravated sexual assault.

Count 3 on the indictment is a charge of indecent assault. It relates to an occasion in February 2020 when the couple were living in Tasmania. Again, the complainant was in bed asleep, and had not consented to Mr ... touching her in any sexual way whilst she was asleep. On this occasion he indecently assaulted her by rubbing her anus with his fingers and putting his mouth on her anus. Those acts were video recorded by him.

Counts 4 and 5 on the indictment are two counts of rape to which Mr ... has pleaded guilty. These two crimes were committed at times during the summer of 2019/2020. Mr ... admitted to them when interviewed by police officers during March 2020, after the videos had been discovered and the complainant had ended the marital relationship. Mr ... told the police that during the relevant period there had been a couple of times when he had been masturbating and touching the complainant while she was asleep, and that the touching included him penetrating her anus and/or vagina with his finger or fingers. Digital penetration constituted the crime of aggravated sexual assault at the time of the earlier conduct in 2015, but constituted the crime of rape following an amendment to the *Criminal Code* in 2017.

Mr ... has also pleaded guilty to two summary charges that I am dealing with under s 385A of the *Criminal Code* – a charge of possessing prohibited visual material contrary to s 134C(1) of the *Police Offences Act* 1935, and a charge of observation or recording in breach of privacy, contrary to s 13A(1) of that Act. Those charges relate to him making video recordings of his wife dressing, undressing and engaging in sexual activity without her knowledge during February 2020, and his possession of those recordings.

All of this offending came to light as a result of the complainant accidentally bumping a laptop computer at the couple's home in late February 2020. The bump activated the screen, and then the complainant activated the computer and found video footage from a camera that her husband had secretly set up in her bedroom. She searched the bedroom, found the camera, and

viewed the secretly recorded footage. She and her mother conducted further investigations and found more and more footage.

The impact on the complainant was devastating. She contacted her husband and initially arranged for him to visit a relative in another State. She soon decided to end the marriage. Her husband's conduct had amounted to an enormous breach of trust. He had been secretly filming her for years. She felt violated, confused, devastated and humiliated. The videos of her husband sexually assaulting her have been watched by her mother and by police officers. She has become a single parent. Mr ... has no contact with their child. The complainant had part-time employment when the videos were discovered, but she resigned from that employment because of the impact on her mental health. She was dependent on Centrelink payments for two years. She continues to receive intensive support from a psychologist, and to take prescription medication to relieve the symptoms of post-traumatic stress disorder.

Mr ... is now in his early 30's. He has no prior convictions. It seems clear that he did not fully appreciate the gravity of what he was doing. He apparently now accepts that his actions went far beyond what was acceptable or consented too. He did not foresee the impact that his conduct would have. The video recordings were kept by him for his personal use and were never provided by him to anybody else.

He has an excellent work history. He has a new partner and is living with her in another State. He has the support of his mother.

The Court has been provided with a detailed report from a clinical psychologist in relation to his mental health. Psychometric testing revealed that he has very limited capacity in respect of general intellectual functioning, verbal comprehension, working memory and processing speed, but an average ability in relation to perceptual reasoning. He has learning impairments that include language disorder and dyslexia. The psychologist opined that he had a borderline intellectual impairment. She also opined that he was suffering from depression with anxious distress and a panic disorder as a result of the charges he was facing. She said that he has difficulties understanding the motivation, perspectives or feelings of others.

His new partner is pregnant. She expects to give birth in February. Mr ... will be in prison when she gives birth. It is unlikely that anyone living in Tasmania will visit him in prison, though there must be a chance of him being transferred to a prison in his new home State. It will probably be a very long time before he next sees the child born to his relationship with the complainant.

It counts in his favour that he co-operated with the police, made significant admissions to them, and pleaded guilty. It was originally expected that his case would go to trial. The Crown prepared trial papers, but did not reach the point of briefing the evidence of the complainant for trial before it was indicated that he would be pleading guilty.

The only appropriate sentence in this case is one of imprisonment. I need to fix a sentence that takes into account the terrible seriousness of Mr ...'s offending, the devastating impact on his wife, and the need to deter others from committing sexual crimes upon sleeping women, but one which also takes into account his limited insight and the other mitigating factors that I have mentioned. I will impose the shortest possible non-parole period because Mr ... has not been in prison before, and I will backdate the sentence to the day when he was taken into custody.

RNC, I convict you and sentence you to two years six months' imprisonment with effect from 13 September 2023. You will not be eligible for parole until you have served 15 months of this sentence. I direct that your crimes be recorded on your criminal record as family violence offences. I order that the Registrar appointed under s 42 of the *Community Protection (Offender Reporting) Act* 2004 place your name on the register under that Act, and that you comply with the reporting obligations under that Act for seven years after your release from prison.