

STATE OF TASMANIA v AIDAN MICHAEL SMITH
COMMENTS ON PASSING SENTENCE

23 FEBRUARY 2024
ESTCOURT J

The defendant first appeared in the Supreme Court on this matter on 5 September 2022. He had pleaded not guilty to one count of rape. On 26 June 2023, Counsel for the defendant advised Counsel for the State that the matter would resolve as a plea of guilty. A plea of guilty was entered on 5 July 2023.

The complainant is T. She was aged 54 years old at the relevant time. The defendant and the complainant were friends prior to this incident.

On 2 September 2021, the complainant sent an SMS message to the defendant asking him to repay her \$50.00 he owed. She received no reply. At approximately 8:00pm the complainant was at home when the defendant unexpectedly arrived. He was in an emotional and intoxicated state. He repeatedly made unusual comments to her such as "come on mumma". The defendant provided \$4.00 in change to the complainant (in part payment of the debt) and informed her that he did not have any other money. They spoke for a period of time in the lounge area of the house of the residence which was being used as a makeshift bedroom.

The defendant said he would go if she gave him a drink so she poured three shot glasses of MEX brand strawberry flavoured cream liqueur with tequila. The defendant drank each shot. The complainant sat on her bed and told him that she wanted to go to sleep and requested he leave. He then started telling her about his problems and began crying. The defendant asked her to cuddle him like a mum and the complainant obliged because she wanted him to go away. As they were laying on the bed, the defendant kept trying to kiss her but she turned her head. She pulled away from the defendant and told him to leave.

The defendant began wrestling with the complainant, attempting to kiss her and grabbing at her breasts. She continued to tell him to get off her but the defendant grabbed the complainant's left thigh, causing bruising, as he tried to pull her legs apart. He then inserted his fingers into the complainant's vagina without her consent, causing her pain. After a few seconds the complainant screamed and wriggled away from the defendant. The defendant became apologetic and asked the complainant not to tell anyone. He asked for his \$4.00 back to get food and the complainant returned the money to get rid of him. He then left the residence.

I have a Victim Impact Statement from the complainant. She has been traumatised by this crime. She is very nervous and jumpy and fears that she is displaying the symptoms of Post Traumatic Stress Disorder. She often feels anxious and suffers from panic attacks so badly that her GP has had to prescribe Valium in order to calm herself. Clearly this crime has had a very serious effect on the complainant's psychological wellbeing.

The defendant is now 22 years old. He was 20 at the time of the offending. He enjoyed a stable childhood and has a close and supportive family. He lives with his parents and siblings and has been in a relationship for over six years. He is employed.

The defendant had known the complainant for a period of five years and would see her roughly once per week, usually at her residence. He respected her and considered her a friend. He has a very poor recollection of the night of the incident, including his activities before and after the offending behaviour. He had been drinking and had taken tablets – I infer – illicit drugs or

unauthorised prescription drugs. It is his belief that the tablets caused him to not only fail to recollect his actions that evening, but also to act in the manner he did towards the complainant.

The defendant was mortified when charged with the offence and found the nature of the offending behaviour was particularly difficult to accept. He could not reconcile his drunken state and lack of memory with the appalling nature of conduct amounting to sexual assault against a friend. As a result of his disbelief that he could perpetrate such an act, he denied the conduct and pleaded not guilty. The defendant ceased using alcohol as a direct result of being charged with this matter.

At the time of this incident, the defendant had one prior conviction for cultivating a controlled plant, a minor offence, for which a conviction was recorded. The defendant has no relevant prior convictions. He has never received a term of imprisonment. The offending behaviour is out of character and the defendant has experienced deep and abiding shame for his act.

The crime of rape almost always attracts an immediate sentence of imprisonment but in this particular case, home detention is now a sentencing option available to the Court. I make a home detention order for a period of 18 months.

All of the core conditions contained in s 42AD (1) of Part 5A of the *Sentencing Act 1997* are imposed. Pursuant to s 42AD (1) (g) and (h), the following conditions are added to the Order:

- you must, during all of the operational period of the order submit to electronic monitoring, including by wearing or carrying an electronic device;
- during the period that you are required to submit to electronic monitoring:
 - a) you must not remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring;
 - b) you must not allow anyone else to remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring;
 - c) you must comply with all reasonable and lawful directions given to you in relation to the electronic monitoring, including in relation to the installation, attachment or operation of a device, or a system, used for the purposes of electronic monitoring by:
 - (i) a police officer;
 - (ii) a probation officer or prescribed officer; or
 - (iii) another person whose functions involve the installation or operation of a device, or a system, used for the purposes of electronic monitoring

The following special conditions are added to the Order:

- you must, during the operational period of the order, remain at **[address provided]** at all times unless approved by a probation officer;
- you must attend the Community Corrections office at Level 1, 75 Liverpool Street, Hobart for induction onto this order. You must attend this service for induction during normal business and no later than 4.00pm this day;
- you must, during the operational period of the order, maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections and be accessible for contact through this device at all times;
- you must submit to the supervision of a Community Corrections officer as required by that officer;

- you must not, during the operational period of the order, take any illicit or prohibited substances. Illicit and prohibited substances include
 - a) Any controlled drug as defined by the Misuse of Drugs Act 2001; and
 - b) Any medication containing an Opiate, Benzodiazepine, Bupropion, Hydrochloride or Pseudoephedrine, unless you provide written evidence from your medical professional that you have been prescribed the relevant medication.
- you must not, during the operational period of the order, consume alcohol, and you must, if directed to do so by a police officer or Community Corrections officer, submit to a breath test, urine test, or other test, for the presence of alcohol.

In addition I make a community correction order for a period of three years with a condition that the defendant complete 240 hours of community service.

I am satisfied that it is not necessary to make an order pursuant to the *Community Protection (Offender Reporting) Act*.