

JAPL, in April this year you were found guilty of two counts of rape. The person against whom the crimes were committed was a girl then aged 15. To protect her identity I will refer to her as V.

At about 3.00 pm on 22 February 2022, V visited the home in suburban Launceston where you lived with your father. You were then also aged 15. V had been spending time with your older sister and they arrived together. Your father arrived home from work at about the same time. For much of the time you, V and your sister were in your bedroom, talking, watching a movie or playing games. However, at about 5.00 pm your sister left for work and you and V stayed together alone. Your father was elsewhere in the house. Your sister's then partner, who had taken her to work, returned and spent time with you also. After he left, you and V engaged in sexual intercourse. You penetrated her vagina with your finger and then with your penis. You ejaculated inside her. The only issue at trial was whether the sexual intercourse was without her consent.

It is for me to determine the factual basis of sentence but my findings must be consistent with the verdict. Facts adverse to you must be proved beyond reasonable doubt. However, in light of the issues at trial and the manner in which the trial was conducted, the facts follow from, or are necessarily implied by, the verdict. The jury must have rejected your account of sexual intercourse in which V was an active and willing participant and must have substantially accepted the truthfulness and reliability of the account she gave.

You had been friends with V for some weeks. You met her through your sister and through school. During that period you often communicated with her through Snapchat. When the time came that you were together alone in your bedroom, you made a sexual advance to her. She had already made clear to you that she did not want to be anything more than your friend and she rejected your advance. She sent a phone message to a friend asking to be picked up. However, you continued with your sexual advances. You positioned yourself over and in front of her, pushed her back on the bed and, while you held her down either by pushing on her chest or by holding her hands, you pulled down her track pants and pulled down your own pants. You pushed her G-string aside and, after spitting on your hand, inserted your fingers in her vagina. You then inserted your penis in her vagina and continued with sexual intercourse until you ejaculated. Throughout this period she was asking you to stop and to get off her, but you continued despite her protests and overcame her resistance by force. You tried to kiss her but she avoided you by moving her head. Instead, you sucked on her neck leaving six very noticeable bruises. She was not otherwise physically injured.

After the sexual intercourse finished she dressed herself, found her phone which was under a pillow, and left. She had to unlock the latch on the door to do so. Her phone had been put on flight mode. I am satisfied that this was done by you and, for that reason, her friends, who had been waiting outside having arrived in a car to pick her up, were unable to contact her and had left. They arranged again to pick her up from an agreed location nearby. When they found V she was highly distressed and emotional. After a short discussion she asked to be taken to her mother who worked at the hospital where, later in that evening, she underwent a sexual assault examination. She told her friends, her mother and the nurse sexual assault examiner what had happened. I have little doubt that the jury was impressed by the immediacy, consistency and detail of the complaints she made to all of those people and to the largely undisputed evidence of the level of her distress after the rapes occurred. All of that evidence strongly supported her

evidence and was completely inconsistent with the account of consensual sexual intercourse which you gave. The differences in those accounts left no room for any possibility of an honest and reasonable but mistaken belief as to consent.

Sentencing has been delayed so I could receive pre-sentence reports. The first is from Youth Justice Services. The second is a report of your suitability for home detention. You are now aged 18. You have no prior convictions. Your personal circumstances were described by your counsel and in the reports I have referred to. You are the youngest of seven siblings. You have a good relationship with them although your childhood was marred by neglect and instability. Your parents separated when you were about 5. You were in the care of your mother but she was affected by abuse of illicit drugs. In 2015, when you were 8 or 9, you were placed into the care of your maternal grandmother. A few years later you went to live with your father, after which your life became more settled. For the last couple of years you have lived in southern Tasmania with your brother and his partner. They, and other family members, are very supportive of you. Your education was affected by the matters to which I have referred, but for the last two and a half years you have maintained full time employment as a factory hand at a seafood processing plant in Dunalley. You drive to and from work every day from near Hobart. Your employer regards you as a diligent and capable employee and you are valued in the organisation. You have no physical or mental health concerns. You do not abuse alcohol or drugs. The author of the youth justice pre-sentence report assesses you as having low risks and needs.

All of those things are in your favour. However you are not entitled to the mitigation of a plea of guilty. Although, with the possible exception of sub-s (e) none of the aggravating factors in the *Sentencing Act* 1997, s 11A, apply here, rape is a grave crime. It is inherently violent and a gross violation of the victim. In this case you achieved your aim by use of force to overcome her resistance, and having prevented her from communicating with her friends at least by phone. I think that her failure to call out to your father resulted from the humiliation and shame she experienced. You did not use a condom and so you exposed her to the risk of pregnancy and transmission of sexual disease although neither of those things transpired. Her distress was immediately apparent. I have no victim impact statement but a crime of this nature is very likely to have had a profound psychological effect on the victim, perhaps for the rest of her life. Whilst rehabilitation is ordinarily the primary consideration for youthful offenders, there is also a strong need for general deterrence and denunciation, in the sense that the sentence must be sufficient to provide the victim with appropriate vindication and to reflect informed public outrage. Other young men must understand that actions like this have serious consequences.

In this case I have determined that all of those conflicting sentencing aims should be addressed by the making of a home detention order combined with a community service order. I regard your case as somewhat different than *Oh Marris*, which has been referred to, primarily because of the difference between your age and his. You have been assessed as suitable for the making of a home detention order. That order will impose a significant restriction on your liberty for a considerable time, which will be difficult for a young man, while allowing for continuation of your employment and avoiding the damaging and corrupting effect of prison for a person who seems to be making good progress in life, and who was 15 at the time of the relevant criminal acts.

On the indictment you are convicted on both counts. Having regard to the nature of this crime I am not satisfied that you do not pose a risk of committing a reportable offence within the meaning of that term in the *Community Protection (Offender Reporting) Act* 2005 in the future although I do not think that the reporting period should be lengthy. I make an order directing

that the Registrar cause your name to be placed on the Register and that you comply with the reporting obligations under the Act for a period two years from today.

I impose one sentence. I make a home detention order with an operative period of 15 months from today. I specify the premises at which you are to reside during the operational period of the order as [address] or such other address as may be approved by a probation officer. I order that you report to the office of Community Corrections at 75 Liverpool Street Hobart at 10.00 am on 17 October 2024 for induction into this order, and a further explanation as to its full terms. There will be conditions that during the operational period of the order:

- (a) you must not commit an offence that is punishable by imprisonment;
- (b) you must reside at the home detention premises;
- (c) you must be at the home detention premises at all times unless:
 - you are travelling to or from, or are at, premises at which you are seeking urgent medical treatment or dental treatment; or
 - because it is necessary to not be on the premises in order to avoid, or minimise a serious risk of, the death of, or injury to, you or another person; or
 - with the approval, of a probation officer or prescribed officer, given –
 - (i) so as to enable you to comply with a special condition; or
 - (ii) so as to enable you to seek or engage in employment; or
 - (iii) so as to enable you to attend an educational or training course or activity; or
 - (iv) so as to enable you to attend a rehabilitative or re-integrative activity or program; or
 - (v) so as to enable you to attend a court; or
 - (vi) for any other purpose approved by the probation officer or prescribed officer.
- (d) you must permit a police officer, probation officer or prescribed officer to enter the home detention premises;
- (e) you must permit a police officer to –
 - (i) conduct a search of the home detention premises; and
 - (ii) conduct a frisk search, within the meaning of the *Search Warrants Act 1997*, of you, at the home detention premises or at any other place or premises; and
 - (iii) take a sample of a substance found on the home detention premises or on the person of you;
- (f) you must comply with any reasonable and lawful directions of a probation officer or prescribed officer, including any directions as to the kind of employment, or the place of employment, of you;
- (g) you must submit to electronic monitoring, including by wearing or carrying an electronic device and:
 - (i) you must not, nor permit another person to, tamper with, damage or disable any device used for the purpose of the electronic monitoring; and
 - (ii) 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 system used for the purpose of electronic monitoring by a police officer, a probation officer or prescribed officer or another person whose functions involve the installation or operation of a device or system used for the purposes of electronic monitoring;
- (h) you must, if directed to do so by a police officer, probation officer or prescribed officer, submit to a breath test, urine test, or other test, for the presence of an illicit drug;
- (i) you must, if directed by a probation officer or prescribed officer to engage in a personal development activity, counselling, or treatment, engage in the activity, counselling or treatment in accordance with any directions given by the probation officer or prescribed officer;

- (j) you must submit to the supervision of a Community Corrections officer as required by that officer;
- (k) you must not take any illicit or prohibited substances. Illicit and prohibited substances include any controlled drug as defined by the *Misuse of Drugs Act* 2001, and 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;
- (l) you must 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.

In addition I make a community corrections order that you perform 105 hours of community service.

These orders comes into effect immediately. You must understand that if you do not comply with the conditions, imprisonment is likely. If you breach the orders by committing another offence, the home detention order must be cancelled unless there are exceptional circumstances, and in that case imprisonment would be highly likely.