

WLB, you were found guilty by a jury of one count of rape. 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 established to my satisfaction beyond reasonable doubt.

You were charged with five counts of rape, one count of indecent assault and two counts of aggravated sexual assault. The prosecution case was that all of these crimes were committed in February 1994. At the time you were 35. The complainant was the daughter of family friends and had just turned 17. The complainant's account was that, after accompanying you to drop off your wife and children to catch the bus to Scottsdale, where they were to spend a few days visiting family, you took her to a place in West Launceston where you made her engage in sexual intercourse and other sexual acts with you in your car. You then drove her back to your home where you, later on the same day, had sexual intercourse with her again on your bed. She alleged that you had sexual intercourse with her again on each of the following two days. She did not report your conduct to the police in 2019, about 25 years later. You were interviewed by detectives and vehemently denied that there had been any sexual intercourse with the complainant. The falsity of that denial was exposed when DNA testing revealed that you were the biological father of the complainant's son born in November 1994, thus establishing the truth of the complainant's account to the extent that there must have been at least one occasion of sexual intercourse in February of that year. You were interviewed again and repeated your denial, although you admitted of the possibility of sexual intercourse.

At trial you claimed that your denials of sexual intercourse to the police were because you had, at the time of the interviews, not remembered that on one occasion you did have sexual intercourse with the complainant. You agreed that this occurred when your wife was visiting her family in Scottsdale. You described this sexual encounter with the complainant to the jury which you claimed to have previously forgotten as an occasion of consensual sexual intercourse in your bed at your home. Your wife gave evidence that she did visit her family on two occasions at the relevant time but was only ever away for one night.

To me, the rationale for the verdicts is obvious. The jury was satisfied beyond reasonable doubt, as it could only have been, that you had sexual intercourse with the complainant in February 1994. The count on the indictment the jury found proved contained the allegation of rape at your home on the first day your wife was away. The jury was not satisfied beyond reasonable doubt that the sexual acts in the car, or the sexual acts on the subsequent days, were proved. The doubt that the jury experienced about those other occasions may have been for a range of reasons, including your wife's evidence that she was away for only one night. However, on all the evidence, the jury was satisfied beyond reasonable doubt that the one instance of sexual intercourse it found proved, was without the complainant's consent.

Subject to those comments, it is my duty to find the facts for sentencing purposes. On the complainant's account she had recently moved into the same house as you, in the unit downstairs, after having fallen out with her family. You claimed that this was not so, and she was living with her family in a regional town. There was conflicting evidence about this. I find myself unable to reject as a reasonable possibility that she was not living there, but in my view it makes little material difference. Even on your own account she was a frequent visitor and spent time at your home, under your supervision at least, if she needed somewhere to go or while waiting for lifts. At the relevant time, as the jury was directed, consent meant consent which was freely given,

and where consent was not procured by reason of the person being overborne by the nature or position of another person. You had known her since she was young. She knew you as a friend of her parents. She did not allege that you used force, but her youth and immaturity, the considerable age discrepancy and the nature of your relationship with her and her family were all entirely consistent with the substance of her evidence that she was vulnerable to being overborne and directed by you to submit. I find the account you gave of this occasion of sexual intercourse to be untrue. I regard your claimed lack of memory of this occasion to be an obvious lie. I am satisfied of the truth of the complainant's evidence that you gave her some alcohol and, when she said she did not feel well, you suggested that she go to your bed. You then took her clothes off, removed your own clothes and had sexual intercourse with her even though she kept telling you no and that she did not want this to happen. There was no room for any mistake.

You are now aged 67. You no longer have paid employment although you have recently performed some volunteer work. Your wife is in poor health and has relied on you as her carer. In addition, one grandchild lives with you. She has both physical and mental health issues which require support which, because of your wife's health, has mainly fallen to you. You have your own health issues. You are diabetic and have medication for what I was told was pancreatic cancer. You have renal dysfunction, bladder issues and suspected melanomas which were scheduled for removal before you were taken in to custody. All of those factors combine to mean that it is likely that prison will be more burdensome for you and will be difficult for your wife and granddaughter.

You have some prior convictions for dishonesty and driving offences but none for sexual offending. The crime of rape is always serious. It involves the profound sexual violation and degradation of victims. I have no victim impact statement in this case but I have little doubt that the crime was highly traumatic for her and has led to long term psychological distress. I accept the account given by the complainant that it was only after many years that she found herself able to disclose what occurred. Regrettably, that is not uncommon in cases of this nature. The crime generally calls for a sentence reflecting the need for punishment, denunciation and retribution, providing the victim with appropriate vindication and protecting the public. Rape is a crime which also ordinarily requires a sentence which seeks to deter others from similar conduct.

I am required by the *Sentencing Act* 1997, s 11A(2), to take into account any of the specified aggravating circumstances which may apply. Some of the factors which might have made the crime even more serious were not present in this case. There was no violence or threat of violence over and above the force necessary to commit the rape. The victim did not suffer any physical injury and was not subject to any other serious form of sexual degradation or humiliation. Conversely, there were features of the crime which were aggravating. I have already referred to the victim's vulnerability. At age 17 she was still a very young person, and I am satisfied that while she was at your home she was, at least in part, subject to your care, supervision or authority. The crime was a breach of her trust. You supplied her with alcohol. The only plausible explanation for doing so was that you intended to facilitate the commission of the crime. By having unprotected sexual intercourse with her you risked causing pregnancy and the transmission of disease and demonstrated your disregard for her welfare. There is no evidence of the transmission of disease but, perhaps most significantly of all, it is a substantially aggravating factor that the crime resulted in her pregnancy and in the birth of a child.

This crime was committed more than thirty years ago. There have been many changes in your life since then. However, there remains a need to demonstrate that crimes of this nature,

whenever they were committed, will not go unpunished. There has been no expression of remorse or contrition. You are not entitled to the mitigation a plea of guilty would have entailed. A plea of guilty is ordinarily a factor pointing to a reduction in sentence, particularly for sexual crimes. The complainant was not spared from having to give evidence, the consequent additional trauma of having to recall and relive the crime committed against her, and the embarrassment and humiliation of having to give a public account of events and subject herself to cross-examination. It is relevant however that you were acquitted of a number of counts. I was asked to consider a period of home detention but the crime is too serious for that. Although I think that, with the passage of time the risk is low, 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. 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 three years from your release.

WLB, you are convicted on count 5 on the indictment. You are sentenced to a term of imprisonment of four years from 9 May 2025. I order that you not be eligible for parole until having served half of that term.