

STATE OF TASMANIA v RICKY JOHN IZARD
COMMENTS ON PASSING SENTENCE

27 MAY 2025
PORTER AJ

Ricky Izard, the defendant, has pleaded not guilty to one count of rape but guilty to one count of indecent assault. That plea has been accepted in discharge of the indictment. The crime was committed on 25 July 2022 in Risdon Prison, where both the defendant and the complainant, who I will simply identify as "J", were inmates. At the time, they were both housed in a unit in a medium security section of the complex which, at the time, held seven inmates. The defendant was serving a lengthy sentence of imprisonment imposed on 5 July 2019 for manslaughter, aggravated burglary and perverting the course of justice. J was on remand, having been remanded in custody in respect of summary offending on 18 July 2022. He was placed in the particular unit about three days before the offending. The unit has individual bedroom units with a communal kitchenette and living area, as well as a bathroom/laundry area which contains a number of toilets and a shower, as well as a built-in cupboard for cleaning supplies. Prisoners are able to lock the doors to their cells, but the door to the bathroom/laundry is not capable of being locked. Each cell contains an intercom through which inmates can contact the prison's central security unit. When J was put in the unit, the defendant introduced himself and told J to clean up after himself, and asked him if he were "into men". J told the defendant he was bi-sexual. Thereafter, J says that the defendant regularly called him a "faggot" and said things like "suck my dick"; "come on, touch it, suck it", causing him to feel apprehensive and fearful. Later, the defendant engaged in other sexualised conversations and gestures towards J, on one occasion while walking around the unit, fully naked and intoxicated on alcoholic "prison brew". On the day of the offending, the defendant had consumed a large amount of that prison brew. He repeatedly told J to "wait for tonight". At unit lockdown time at 4.30pm, the defendant was told by a correctional officer to get dressed and complied to the extent of putting on a pair of underpants. Just after prison officers completed the muster, the defendant walked towards J and forced him backwards into the bathroom, then shut the door behind him. The defendant stood in front of J so that he was not able to leave and told him to suck his dick or get in the cupboard, something which he repeated a number of times. J was fearful of what would happen if he went into the cupboard and began to cry, saying that he had done nothing wrong to the defendant, that he had given him respect, and asked to be let out. The defendant said, "Please won't help you in here. I'm in here for murder" something which J had not previously known. Strictly, the reference to murder was of course incorrect.

J tried to get past the defendant but was unable to do so. The defendant then took his penis out of his underwear, took hold of J's hair and pushed J's head towards his penis. He said "suck it or you're not getting out". At this stage, there was a distance of about 20 centimetres between J's face and the defendant's penis. J tried to move towards the door while the defendant had hold of his hair. He was repeatedly calling out to the other inmates for help but received none. On at least two occasions other inmates tried to open the door but were unable to do so. Shortly after, two inmates did enter the bathroom but neither provided assistance, with one of them saying "don't look at me". In total, the defendant and J were in the bathroom for nearly 15 minutes, the incident ending when one of the inmates went to go into the bathroom and J pushed past the defendant who tried to stop him from leaving. J broke free and returned to his cell, shut the door and used the intercom to call for assistance. When officers attended, J was described as being emotionally distressed and crying. Officers reviewed the CCTV footage and a decision was made to remove the defendant from the unit and relocate him. Members of the response team carried that out. The defendant appeared highly intoxicated, was moving erratically, slurring his words and in an agitated state. A few days later, in a recorded telephone call to a friend, he made some admissions about his conduct. The incident was subsequently

reported to police and J made a statutory declaration. Police then sought to interview the defendant, but he declined.

The defendant will be 34 years old tomorrow. He has a recorded history of offending starting in 2010. The earlier offences involve dishonesty and driving matters which saw him a subject of a partially suspended gaol term in June 2010. Similar offending followed but violence emerged. In February 2014 he was sentenced to 15 months' imprisonment with seven months suspended on an aggravated robbery charge. In April 2015, on a Criminal Code assault, there was a sentence of 8 months' imprisonment with four months suspended. On 5 July 2019, as I earlier mentioned, the defendant was sentenced on a charge of manslaughter and two other charges. The sentence was one of 10 years imprisonment backdated to 2 February 2017 with a non-parole period of six years. It follows that the defendant was eligible for parole on 2 February 2023. His application for parole stands indefinitely adjourned. I was told, without dissent, that there was a series of hurdles. First, his proposed place residence of on release was with his brother, his brother's wife and their two children. Apparently, because of the presence of the children, Community Corrections deemed the address unsuitable. He was then accepted into crisis accommodation, subject to being put on the Suboxone program which he achieved, but underlying all of this was the fact that this matter remained unresolved; an impediment to the Parole Board considering his application. Parole is an issue to which I will return.

I have a comprehensive psychological report from Dr Jennifer Wright dated 25 April 2025 and the benefit of counsel's submissions. As to the defendant's other personal circumstances, he did not know his biological father as his parents separated before he was born. He regrets now from being estranged from his mother because of the manslaughter conviction. He has an older sister and two half-brothers to one of whom he is quite close. I was told that his siblings are not anti-social, with the defendant being the exception. He was diagnosed with ADHD as a very young child and had both a disruptive time at school with his schooling disrupted. He was problematic at home. He finished his education in year 11, having been diverted into training and practical skills. Since then, he has had some work of a casual nature, and it appears that since his time in prison he has worked in various capacities within that environment. He has been in receipt of a disability support pension since the age of 16 due to his ADHD and literacy problems. Because of his association with drug users, the defendant started drug taking in his late teens and earlier 20's, which contributed to his anti-social behaviour. In Dr Wright's view he meets the criteria of a substance use disorder which is described as a cluster of cognitive behavioural and psychological problems. The ADHD is clearly still having an impact on the defendant's functioning as an adult. Dr Wright says he has problems with executive functioning, making consequential decisions, hyperactivity and poor attention and concentration. He is also diagnosed with traits of a number of other disorders which, in combination, lead to an instability of interpersonal relationships, marked impulsivity, fear of rejection and abandonment. He shows behavioural instability with impulsive and reckless offending. As to this offence, Dr. Wright says that having assessed the defendant and his history she thinks he was attempting to frighten and intimidate because he found J's untidy behaviour irritating, or at least his perceived untidy behaviour. Dr Wright repeats this conclusion after a lengthy analysis of the defendant's psychological state and a risk assessment. She says he was not motivated by sexual gratification, but was motivated by anger and disinhibition, and the desire to intimidate and frighten so as to make a point. This formed part of a pattern of an anti-social tendency to lash out and intimidate others if they anger him, and of course was coupled with him having been extremely intoxicated. The State did not take issue with these ultimate conclusions. Given the analysis set out in the report, I am satisfied that it is appropriate to proceed on the basis of those ultimate conclusions. In Dr Wright's view the *Verdins*

considerations have no application. It was the defendant's intoxication which was primarily responsible for his behaviour not the effects of his mental health issues. What is of some significance is Dr Wright's view that the defendant can reflect on his behaviour and take some responsibility for it. He has a desire to connect to other people and values his relationship with his brother and sister-in-law. There is scope for rehabilitation in the form of long-term engagement in psychological intervention and education to minimise resort to intimidation when angered, to work on his behavioural controls generally, and to control his substance abuse.

Those conclusions about motivation notwithstanding, the incident must have been a very frightening experience for J. This was sexualised violence by one prisoner against another prisoner, inmate violence and intimidation should not be tolerated. J was confronted with a very drunken man with an apparent violent past who manhandled him into a particular location, had hold of him and was threatening him to perform oral sex. The period of time involved was quite lengthy. The defendant's high level of intoxication would have made it even more threatening. That level of intoxication means the defendant has little meaningful recollection of events. He accepts the facts as stated, and by his plea admits that his acts were indecent. He accepts that J would have not known of his intentions, but I am told that the defendant is firmly of the view that sexual gratification was not the reason for his conduct. This was a prison offence. As such, it adversely affects discipline and proper management of the prison. A number of officers was required to defuse the situation and remove the defendant. He has been subject to prison discipline because of his behaviour. He was effectively put into solitary confinement for about ten days. Although there is some dispute about the detail it seems that he was naked for a time without a mattress. Although completely isolated from other prisoners there were some controlled time out of the cell. He was removed from medium security and was moved through the three maximum security units in the prison. He is now in the least rigorous of those sections. In addition, he was charged with assaulting a public officer which arose out of an incident during his removal immediately following the offence. He was sentenced to seven days imprisonment cumulatively to the sentence he was serving. The plea of guilty, accepted as it was in lieu of the charge of rape, has some utilitarian value. Given the manner of resolution of the indictment, it should not be regarded as a late plea for sentencing purposes, and the delay in resolution is attributed to difficulties communicating with previous legal representation. A term of imprisonment is necessary to mark the seriousness of this offending. The real question is how it is to be served. This is a matter of some difficulty in this case, somewhat complex as it is. The defendant has now served nearly 16 months beyond his parole eligibility date and although there can be no certainty, there would have been at least not unreasonable prospects of being released but for this offending. Section 15(3) of the *Sentencing Act* requires a sentence cumulative to the present sentence unless directed otherwise because of exceptional circumstances. I note that s 71(6) of the *Corrections Act* provides that the defendant's current sentence is not a designated sentence for the purposes of that section, and by s 71(8), the minimum term for a new designated sentence is taken to commence on the day in which that sentence is imposed, or on any such day as may be specified. In all of that, given the circumstances with parole as I have outlined, the other harm the defendant has already done to himself and bearing in mind the issue of totality given the length of time he has already spent in goal, I am satisfied that exceptional circumstances exist. I will deal with the matter as provided for s 15(1A)(b).

Mr Izard, I have set out the facts of the matter, your personal circumstances and some matters that need to be taken into account. As I have explained, this is a matter of some complexity given the history you have at present. I repeat that this must have been a very frightening

experience for the complainant. I have accepted as probable that your motivation was not a sexual one. In spite of that it remains a serious matter for the reasons I have explained and of course was in breach of prison discipline. I take into account the consequences of your offending on yourself both immediately and in terms of your application for parole. You seem to have some prospects of rehabilitation. You are convicted of the crime and sentenced to 12 months' imprisonment to commence on 2 February 2023. After careful consideration of the psychological report, I am satisfied that you do not pose any real risk of committing a reportable offence in the future and I decline to make an order under the *Community Protection (Offender Reporting) Act 2005*.