

AJP, I found you guilty, following a judge alone trial, of the crime of rape. The judge alone trial was ordered because you suffer from several conditions which impact upon your ability to process your thoughts, exercise judgment and control your emotions, and I was satisfied you may be overwhelmed, and therefore unable to properly participate, in the trial process. It is important to note that there is no suggestion in any of the material relied upon in support of the application for a judge alone trial, that you do not have capacity to understand right from wrong or understand that some things are against the law. On 16 May 2022, you penetrated the vagina of the complainant, whom I shall refer to as K, with your penis, without her consent. At the time, both you and K were in a respite facility and were receiving support from Disability Support workers. You were aged 15 years and 10 months, and K was aged 14, when this crime occurred.

The factual basis of sentence flows from the findings I made during the judge alone trial. During the trial, there was no argument that sexual intercourse had occurred. The only issue was whether the sexual intercourse was without K's consent.

Both you and K regularly attended the respite home on the same alternate weekend. You were not friends but knew each other from the time you had spent together at the respite home. You did not spend a lot of time in each other's company and one of the support workers described you as "having different interests" and said that you found K to be "a little bit annoying" and therefore you tended to stay away from her.

At the respite home, both you and K had separate bedrooms. In the early hours of 16 May, you were in a lounge room of the respite home. K's bedroom was immediately adjacent to this lounge room area. You became aware that K was awake, most likely when K went to a bathroom area. Thereafter, you followed K into her bedroom. She was on the bed. You suggested to K that the two of you have sexual intercourse. She told you "No", but you persisted. You positioned yourself over her on the bed, removed your pants and laid on top of her. You pulled down her pyjama pants and held her by pushing down onto her shoulder area. You then proceeded to have sexual intercourse with her. During the intercourse, she told you no and tried to push you and kick you, but to use K's words, you just "kept going and going". You continued until you ejaculated. You were not wearing a condom.

After the sexual intercourse finished, you left the bedroom and returned to the lounge area. K stripped her bed and laundered the bedding. I cannot conclude this was a consequence of the rape, as laundering the bedding, was a rule at respite on the last morning of the weekend. At about 6.45am, a support worker found you and K in the lounge area, sitting on opposite ends of a couch. K immediately asked to speak to her privately and told her that you had had sexual intercourse with her when she had been saying no, and said she was sore and bleeding. The matter was reported to police. K underwent a forensic examination at the hospital. The collection of vaginal swabs was very difficult because of K's vulnerabilities and her emotional state. Nevertheless, the forensic examination found a low number of sperm within a vaginal swab. DNA testing revealed that the sperm was consistent with having come from you.

You gave evidence on the judge alone trial. You claimed the sexual intercourse was consensual. You said upon entering K's bedroom, you asked her if she wanted to have sex and claimed that she said yes. I rejected your evidence. In my Reasons for Judgment, published 5

March 2025, I described your evidence as artificial and contrived and rejected your account as being a truthful one. I found it simply implausible that against a background of limited interaction and no prior affection, that within moments of entering K's bedroom, you would ask for, and receive consent, to having sexual intercourse.

As noted, this crime occurred when both you and K were in respite care. You both suffer from a number of difficulties. In a witness intermediary assessment report, obtained in respect to K, it was noted that developmentally she presents as much younger than her chronological age, and her receptive and expressive language are significantly delayed for her age. K has a diagnosis of Global Developmental Delay. She has been assessed as having a moderate intellectual disability, and functions at a level which is equivalent to a 5- or 6-year-old. She attends a support school and cannot live independently.

K has been badly affected by this crime. I received an impact statement from both K and her father. In her statement, K outlines how the crime made her feel "sad, angry and confused". She did not want to return to respite after it occurred as she was scared it might happen again. K also speaks of court making her feel sad, and that she was scared. In her father's statement, he describes how scared and confused K was after the incident and how traumatic the forensic examination at the hospital was for her. He also speaks of K still experiencing confusion, anger and sadness since the incident, and having significant trust issues, particularly in respect to returning to respite, or if she comes across anyone with your name. Since the crime, K has had difficulty sleeping, has been frightened and has been depressed. She was hospitalised at one point because of her reduced mood.

You are now aged 19. You have no prior criminal record. You have endured a difficult upbringing. You were born to parents who had intellectual disabilities and limitations in their ability to care for you. You were taken into care by Child Safety Services when you 19 months of age due to parental neglect, physical abuse, parental mental health issues and suspected family violence. It seems your biological parents were unable to provide even the most basic of care, such as appropriate food, social interaction and nurture. When you entered care, your development was significantly delayed. You did not speak and had difficulties in terms of socialisation. You would sit and watch, but not join in with play. You remained with your foster parents until March 2024, at which time you were removed because of allegations of abuse within that home. You no longer spend time with your foster parents. You attended school during your formative years, but given your behavioural difficulties and your difficulties with socialisation, it was often sporadic. You have never worked, but now live independently with support from NDIS. You remain heavily reliant upon support services.

I have received and considered a number of reports prepared by Dr Elysia Cunningham, Clinical Psychologist, who has worked with you since 2012. In 2019, your full-scale IQ was assessed and found to be in the average range, with your academic skills being generally well-developed; but your adaptive functioning skills were found to be in the extremely low range, significantly below what would be expected given your age and cognitive functioning, meaning your social and emotional skills are very lacking.

You have been diagnosed with autism spectrum disorder and attention deficit hyperactivity disorder. These conditions significantly impact on your emotional control, your social intelligence and behaviour management. They render you liable to poor impulse control, you are prone to emotional outbursts and struggle to self-manage your behaviour and reactions. You have poor social judgment and have difficulty in complying with societal expectations.

You struggle to form or maintain positive relationships. The disabilities from which you suffer impact on the way in which you learn, process information and control and manage your emotions. You are prone to making decisions and reacting to situations without stopping to think.

Whilst I accept your disabilities are relevant in a general way to sentencing, there does not, on the material available to me, appear to be a direct nexus between your disabilities and the crime such that it, in any substantial way, reduces your moral culpability. Indeed, Dr Cunningham opines that your disabilities do not reduce your moral culpability, but they do impact upon your understanding of social norms and expectations, such that you can easily misconstrue situations. Given my findings, I do not consider there is any room for you to have misconstrued the fact K was not consenting, but your disabilities are obviously relevant to your understanding of social expectations and inform the degree of thought that would have attached to your actions. Your disabilities, remain relevant to sentencing, because they provide the context within which the offending occurred.

I also accept that because of your vulnerabilities, a period of incarceration will be more onerous for you than others. It is likely that you will be subject to bullying and other forms of abuse within the prison environment. Given your limitations, it is unlikely that you will be able to understand or appreciate the nuances of a custodial environment, thereby making it more likely that you will come into conflict with others, placing you at additional risk. I also suspect that given your vulnerabilities; you are likely to be easily influenced by others. This is particularly so, given you are now 19, and therefore even if I was to sentence pursuant to the provisions of the *Youth Justice Act* and impose a period of detention, you will serve it in an adult prison.

Given your age and disabilities, exposing you to the damaging and corrupting effect of a prison environment is a matter that concerns me. That is so even though you have recently been remanded in custody in respect to some new allegations. Accordingly, I had you assessed as to your suitability for a home detention order. Unfortunately, you are not considered suitable for such an order because it is thought that you will have difficulty in complying with the restrictive nature of such an order, given your disabilities. It is also noted that you use cannabis on a daily basis to assist with your anxiety and to regulate your emotions. It seems you have no motivation at present to cease cannabis use because you consider it assists you within social settings. Your unsuitability for home detention limits sentencing options. For the same reasons, you are not suitable for community service and a supervision order is not recommended as there are no additional supports that can be provided beyond those you are already receiving from NDIS.

Your age when this crime occurred is an important consideration. The principles relevant to sentencing youthful offenders are well understood. The law generally allows lenience to young offenders as their immaturity leads to them being "more prone to ill-considered or rash decisions" and means they "may lack the degree of insight, judgment and self-control that is possessed by an adult" and may not fully appreciate the nature, seriousness and consequences of their criminal conduct. Such comments are apposite here, particularly considering your disabilities. Whilst there is nothing which indicates you did not appreciate the wrongfulness of your actions; your behaviour must be assessed against the background of your disabilities and Dr Cunningham's opinion that you have limited understanding of social norms and a propensity to make impulsive and ill-considered decisions.

This is a difficult sentencing exercise. It was a very serious crime. K was very vulnerable. I am satisfied that you knew she was vulnerable in the sense that you described yourself as "more switched on than her" in your evidence, although the extent to which you fully appreciated her limitations is restricted by your own disabilities. Regardless of that, she has been badly affected by your actions and I suspect the true extent of the impact has not yet revealed itself. You are not entitled to the benefit of a plea of guilty. You have shown no remorse, nor insight or understanding of how your behaviour hurt K. The reports of Dr Cunningham suggest you do have capacity for such understanding, but struggle to acknowledge your own wrongdoing. Personal deterrence and community protection are relevant sentencing considerations.

The very nature of rape is that it is violent and demeaning and a gross violation of the victim. In this case, you used force to overcome K's resistance and achieve your purpose. You did not use a condom, and you therefore exposed K to the risk of pregnancy and the transmission of sexual disease, although it seems, fortunately, neither of those things transpired. K's distress during the forensic examination was considerable and a direct consequence of the rape.

There is a need to balance a number of conflicting sentencing aims in this exercise. Given your age at the time of the crime and your disabilities, an individualised approach is warranted. In my view, the sentence ought to be appropriately tempered, and rehabilitation given emphasis. At the same time, general deterrence and denunciation cannot be ignored and the sentence must be sufficient to provide the victim with appropriate vindication and reflect *informed* public outrage. Other persons must understand that actions like this have serious consequences.

Weighing all matters carefully, and having reflected on this sentence for some time, I have determined that given your current age and the objective seriousness of the crime, it is appropriate that I sentence you pursuant to the provisions of the *Sentencing Act*. In my view, a period of imprisonment must be imposed, but it is appropriate that a significant portion of the sentence be suspended.

AJP, you are convicted of the crime of rape. You are sentenced to imprisonment for a period of two years, commencing 25 June 2025. The last 12 months of that period of imprisonment will be suspended on condition that for a period of two years, you commit no offence punishable by imprisonment. I order that you not be eligible for parole until you have served one half of the operative period of imprisonment. The nett effect of the sentence is that you will be eligible for parole after you have served six months' imprisonment. I am not satisfied that you do not pose a risk of committing any reportable offence in the future. Because I am not so satisfied, I must impose an order pursuant to the *Community Protection (Offender Reporting) Act*. I order that your name be placed on the register and that you comply with the reporting obligations under that Act for a period of five years following your release from custody.