

Cody Sparkes, you were found guilty by a jury of two counts of rape. It is my responsibility to determine the factual basis of sentence. Facts adverse to you must be proved to my satisfaction beyond reasonable doubt. My findings must however be consistent with the verdicts and, in this case, the facts are determined by the verdicts. The jury must have been satisfied, in every essential respect, of the truth of the evidence of the complainant.

On 31 December 2021 you attended the home of a friend to celebrate the New Year with a small number of other friends and acquaintances. You were 18 and the plan was for you to stay the night. One of the other young men present, who was only just 16, drank too much alcohol too quickly and passed out in his swag in the back yard at about 10.00 pm. You and others, including the host's mother, were concerned enough about his welfare to check on him periodically. However, in the middle of the night, after everyone else had left or retired to their respective sleeping places, he became aware that you were there and had placed your mouth over his erect penis and your finger in his anus. He became conscious enough to appreciate what was happening but too asleep or affected by alcohol or both to respond. He remembered feeling some pain as a result of the penetration of his anus. He felt your finger being withdrawn from his anus when he heard the sound of a door opening. That might have been the mother of the host coming out to check on him again. He could not say, and I cannot determine, when the oral sexual intercourse ceased in relation to that. He thought it went for about 10 minutes but his evidence was vague. I am unable to find why the sexual acts ceased.

The following morning, when he was fully awake and the effects of the alcohol had worn off, the complainant was distressed about what had happened. Later that day he told his friend and then his parents and the police were notified.

In your evidence in the trial you effectively admitted some criminal conduct. You claimed that the sexual contact was not oral or anal sexual intercourse but masturbation of the complainant's erect penis with your hand. The jury must have rejected your account, as I do, as an attempt to explain the presence of your DNA on the complainant's penis in a way which involved a lesser degree of criminality.

Even on your own account, it was abundantly clear that the complainant did not consent to sexual contact of any nature with you. You and he had met on only a few occasions and were not friends. He had done nothing to invite any such attention either on a previous occasion, earlier that night or at the time. There was no room for any mistake. You took no steps at all to ascertain consent. Nothing was said. The sexual acts commenced while he was asleep and, to your knowledge, affected by alcohol. You claimed that there was a thrusting of his hips during the act. Not only did that not occur until after the rapes had commenced, but, in the circumstances, fell far short of being any indication at all of consent. Your advance was not, in fact, welcome. It was not only not consented to, it was unwanted and contrary to the complainant's own sexuality.

You have no prior convictions. You have been industrious since leaving school. You come from a responsible and supportive family. There was some delay before you were charged which was onerous for you. These proceedings are such, of themselves, to reduce the chance that you will do something like this again. I accept that you are now ashamed of what you did.

You were an adult at the time of the crimes but the principles which apply to youthful offenders should properly be applied to you. You may have been, by reason of your youth, more inclined to lack judgment or self-control. Rehabilitation, where the prospects are good, assumes greater emphasis. Without more, conviction for crimes of this nature will affect you forever. Imposition of an actual sentence of imprisonment will have a profound and likely harmful effect. You will be deprived of your liberty and exposed to the corrupting influence and difficult conditions of prison. Prison will be difficult for you having regard to your age and presentation.

However, there is a reduction in the mitigating effects of your youth corresponding to the level of seriousness of the crime. Rape is an inherently serious crime. Some aggravating factors which exist in other cases are not present here. Only one of the aggravating factors in the *Sentencing Act*, s 11A, applies. The complainant's friend was sleeping only a couple of metres away and that friend's mother was inside the house, coming out occasionally. However at the time the complainant did not know of that and there is no evidence that these facts added to his trauma or the impact of the crime. However any act of non-consensual penetration constitutes invasion of the bodily integrity of the victim and is thus objectively serious, irrespective of the form and the extent of the penetration. It involves infliction of physical, emotional and psychological degradation. My duty is to impose a sentence which reflects the need for punishment, denunciation and retribution, provides the victim with appropriate vindication and protects the public. As far as a court can achieve, the sentence must deter others from similar conduct by making clear to potential offenders that committing the crime of rape will result in harsh punishment. There is a particular need for courts to demonstrate to everyone, especially young men, that they will be criminally responsible and liable to punishment for sexual acts performed without consent and without taking proper steps to obtain consent. Criminal responsibility and punishment is not reduced even if the offender is emboldened by alcohol or drugs to act in a way that they may not otherwise have acted.

You are not entitled to the mitigation that a plea of guilty would have attracted. The victim has not been spared the additional trauma of waiting for a trial, preparing for and giving evidence and being cross examined about intimate details. The psychological and emotional impact on victims of serious sexual crimes can be profound and often lifelong. In this case the complainant's distress was immediately apparent, especially to his parents. The complainant struck me as not a person prone to emotional overstatement, but he describes nevertheless in his victim impact statement flashbacks when he experiences events which remind him of that night and struggles with physical intimacy. He has sought assistance from a psychologist and is medicated for symptoms of anxiety. It is impossible to determine with certainty what the long term impact might be.

The nature of these crimes is such that 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, but I do not see the need for a lengthy reporting period. 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 your release.

You were remanded in custody following the verdicts on 10 December 2025. The only appropriate sentence is a term of imprisonment although I will allow the earliest possible eligibility for parole. For an older offender a longer term would have been imposed. You are convicted on both counts on the indictment. I impose one sentence. You are sentenced to imprisonment for three years from 10 December 2025. I order that you not be eligible for parole until you have served half of that term.