

TPB, you have pleaded guilty to charges of code assault, rape and unlawfully injuring property. In addition, I am also dealing with charges on complaint 3855/2023 pursuant to s 385A of the *Criminal Code*, and your plea of guilty to a single charge of breach of interim family violence order on that complaint.

The complainant in respect to each of these matters is your former partner. You were in a relationship for a number of years until you separated in 2020. You have two children, twins born in 2013.

On 24 August 2020, an interim family violence order was made for the protection of the complainant in the Hobart Magistrates Court. You were in court when the order was made and aware of the conditions. It remained in force because no final family violence order had been made and the Court had not ordered that it be revoked. You left Tasmania for a period. In 2022, you returned to Tasmania and in early 2023, you contacted the complainant when you were in Hobart. The two of you re-commenced a sexual relationship. You stayed at the complainant's house on a number of nights and you had consensual sex.

You were at the complainant's house on the evening of 22 April 2023. This was in breach of a condition of the interim family violence order that you not be within 50 metres of the complainant and is the conduct giving rise to the charge of breach of interim family violence order to which you have pleaded guilty. During the evening, you consumed the drug GHB, squirting it into your mouth from a syringe. The complainant tried a small sip of the drug but did not like the taste and had no more of it.

After you took the GHB, your behaviour became erratic. You fell asleep on the couch with one hand down your pants. You then woke up and knocked the table over, causing some items to fall onto the floor. There was some swearing between you and the complainant. You then made some comments which the complainant understood meant that you were interested in having sex with her. She told you she did not want to have sex and that she did not want to get pregnant. The complainant was not on any contraception at the time. She told you that if you could not control yourself, you would have to sleep on the couch. She repeated that she did not want to have sex.

The two of you smoked cigarettes and cannabis for a period. You then got into the complainant's bed together. You were wearing a t-shirt and boxers. The complainant was wearing a singlet and pyjama bottoms. You initially went to sleep, but then woke up and quickly rolled onto the complainant. You pulled her pants down, moved her legs up and had vaginal sexual intercourse with her for approximately two minutes until you ejaculated. You rolled off the complainant and said, "That was epic". The complainant did not consent to having sex with you. She did not physically resist or verbally complain while you were having sex with her, however, due to what was described to me as "the history" between you.

After this occurred, the complainant went to the bathroom. You went to the kitchen and made yourself some food which you ate in bed, although the complainant had asked you not to, spilling some of it. You smoked a cigarette and fell asleep. The cigarette burnt a hole in the doona.

The next morning, you woke up at 8:00 am. You got out of bed and referred to the complainant by the name of another former partner. The two of you had a verbal argument, during which the complainant told you to leave. The two of you abused each other. You then punched the complainant to the back of her left shoulder blade. This caused significant pain and resulted in bruising. This comprises the charge of assault. You then punched a hole in the living room wall and smashed a window. This conduct gives rise to the charge of unlawfully injuring property.

The complainant told you to leave and threatened to attack you with a shovel if you refused. You left the house. The complainant rang triple zero and reported that you had been at her house, assaulted her and damaged her property. The police arrived a short time later and spoke with her about the history of your relationship and the events of the previous evening and the morning. The complainant initially told police that she had not had sex with you the previous evening. However, when at the police station, she asked to speak privately with a female officer where she disclosed that she had been raped. She was then interviewed about that allegation and photographs were taken. She was taken to the hospital for a sexual assault examination. Samples from that examination were forensically tested. Semen and DNA with a high grade match to you was detected on a low vaginal swab.

You were arrested by police and interviewed in the following days. You told police you had not seen the complainant since you were back in Tasmania, and that the last time you had seen her was approximately three years ago. You told police that you were not sure if there were any court orders in place between you. You were shown a copy of the interim family violence order and commented, "Yeah, I'm not allowed to contact her. Fuck." You told police that on the previous day, you "got on the piss and got on the GHB". You said that you were at your mother's house with your mother, step-dad and another friend, and that you were home all day.

The complainant has provided a victim impact statement. She describes feeling powerless, ashamed and betrayed by you when you raped her. She considers that you saw her as an object that you owned. Since the rape and assault, she feels that her home, which used to be a safe place for her, is now a reminder of what happened. She found the examination at the hospital intrusive and triggering. She had to take the morning after pill and wait and see if she had contracted any sexually transmitted diseases from you as you did not use a condom. She described it as a really stressful time. While her physical pain has healed, as of February 2026, she says the psychological pain is still there.

You are 36 years old. You were born with cerebral palsy, which has had lifelong effects on your mobility and self-esteem. You endured multiple surgeries as a child. Your disability has had a complex impact on you. You were bullied as a child at school, which, in part, was a catalyst for you leaving before completing Year 10.

You have struggled with substance abuse, including intravenous use of methylamphetamine and alcohol. Although you have attempted, at times, to overcome your addictions, you have not achieved abstinence. During a period late last year, while on bail, you managed to remain abstinent from use of methylamphetamine and reduced your alcohol use. You took steps to obtain counselling and support, including undertaking an in-take assessment at the Salvation Army Bridge Program. I am told this was the first time you expressed a willingness to accept professional support for your substance abuse issues.

As to this offending, you were clearly under the effects of drugs at the time. Your relationship with the complainant had been an on again/off again one for a lengthy period of time. Both of you, at times, have been the subject of family violence orders for the other's protection. On this occasion, you were using GHB. You say this was the first time you had used this drug and

you were not familiar with its side effects. You were also using alcohol and smoking cannabis over the course of the evening. You have an incomplete recollection of the events of that night.

As to the rape, you failed to appreciate the complainant had not consented to you engaging in sexual intercourse with her. The State accepts it would have been an issue at trial whether you had a mistaken belief that the complainant was consenting to sexual intercourse in the context of the previous consensual relationship and the complainant not actively resisting at the time you engaged in sexual intercourse with her. It is the case, however, that the complainant clearly indicated she did not want to have sex with you at all that night. You accept that any mistake you harboured about the complainant's willingness to engage in sex with you that night was one you would not have made but for your intoxication, which was self-induced. You did not take any steps to ascertain if she was consenting to the act. Clearly, the so-called defence of honest and reasonable mistaken belief in consent has no application to the circumstances of this case: see s 14A(1)(a) of the *Criminal Code*. In addition, while the effects of the drugs and alcohol you consumed may, to some extent, explain your conduct, the fact of your intoxication is not a matter relevant to mitigation: see s 11C of the *Sentencing Act*.

You explained the assault occurred in the context of being woken by the complainant the next morning and being hungover as a result of your drug and alcohol use the night before. You were annoyed by this and backhanded the window, causing it to break. You hit the complainant in the shoulder in the context of an argument that had arisen between the two of you when you mistakenly referred to her using the name of another former girlfriend. You claim the complainant did, in fact, strike you with the shovel she was holding. By your plea, however, you must be taken to have accepted that hitting the complainant to the back of the shoulder was not an act done in self defence. You have had no further contact with the complainant since these events.

It is acknowledged that your plea is not an early one. There were, however, discussions between prosecution and defence which resulted in prosecution discontinuing some charges.

You have a significant history of prior convictions, commencing when you were in your late teens. In Tasmania, you have numerous prior convictions for dishonesty offences, including stealing, burglary, and aggravated robbery. In the case of the aggravated robbery charge, you were sentenced to 12 months' imprisonment with four months suspended, in June 2015. You

also have prior convictions for exceeding .05, motor vehicle stealing, driving whilst disqualified and unlicensed driving. You have received periods of both actual and suspended imprisonment in this State for such offending. You have been the subject of applications to breach suspended sentences in 2012, 2013, 2014 and 2019.

Relevant to the present offending, you have a history of committing offences of violence, including in the context of intimate relationships, and destruction of property. You have nine prior convictions for common assault and nine for injuring or destroying property, including a *Criminal Code* destroy property which resulted in a partially suspended period of imprisonment being imposed in 2011. In addition, you have a number of prior matters for offences against police, including assault police and threatening police. You have a prior conviction in South Australia for aggravated assault of a spouse or child, and contravening the terms of an intervention notice in 2019. You were sentenced to a short period of imprisonment in respect of those South Australian matters. In New South Wales, you have two prior convictions for common assault in a domestic setting, two breaches of an apprehended violence order, and a conviction for stalking relating to two separate incidents. In respect of the second of those incidents, you received a community correction order commencing 6 December 2021 and concluding on 5 June 2023. You were, it seems, still the subject of the community correction order imposed in New South Wales at the time of committing these offences.

In addition, you have numerous offences of breach of bail. You have been convicted of breach of police family violence order and breach of family violence order in this State in 2012. You were convicted of two counts of breach of police family violence order in 2014. The 2014 convictions relate to orders made for the protection of the complainant. In summary, your record of prior convictions demonstrates a long history of violent offending and breach of court orders, including sentencing orders.

You have spent about 22 months in custody since committing these offences, which has been unallocated to any other offending. I take the period that you have spent in custody into account. I also take into account your personal circumstances and your pleas of guilty. As to the latter, although entered at a late stage, the time that has elapsed is explicable in part by the negotiations required to resolve the matters and they have saved the complainant the distress of giving evidence in a trial.

These are very serious offences. Your rape of the complainant was a gross breach of trust. You were a guest in her home and treated her appallingly. She clearly expressed she did not want to have sex with you, including by advising you she did not want to get pregnant. Nevertheless, you had sex with her without protection, and ejaculated inside her, exposing her to the very risk she told you she wished to avoid. This is a further factor aggravating your offending. Your violence the following day towards her personally and by damaging her home, is reflective of your complete disregard for the complainant. Being annoyed about being woken up is no justification for lashing out. For the reasons I have already explained, your intoxication is not a mitigating factor. It is obvious that your use of substances and alcohol have been a significant contributing factor in your offending to date. You are now in your late 30's and have to date taken few steps to meaningfully address those issues. I am told you are now keen to do so. I hope that is the case.

Although you have no prior matters for sexual offences, you have a concerning history of other forms of violent offending. While your rape of the complainant was not accompanied by overt violence, it is well recognised that any act of non-consensual penetration constitutes invasion of the bodily integrity of the victim and is inherently violent. Such offending also inflicts emotional and psychological damage on the victims. The complainant has experienced both physical and psychological pain as a result of your offending on this occasion. The latter is ongoing.

Your conduct was utterly selfish. It was entirely directed at satisfying your own sexual urges with no regard whatsoever to the complainant. General and specific deterrence are both relevant considerations. This Court must continue to reinforce that violence in the context of intimate relationships, including sexual violence, must not be tolerated. In your case, you have a poor history of violent offending generally and in the context of your intimate relationships.

A lengthy period of imprisonment is required in order to vindicate the complainant and send a clear message to you and the community that violence, including sexual violence, is not tolerated within intimate relationships. The non-parole period I intend to impose reflects the *minimum* period of time that I have determined justice requires you serve, having regard to all the circumstances of the crimes you have committed. I have concluded that you should serve something more than the minimum term before becoming eligible for parole.

TPB, you are convicted on counts 1, 3 and 4 on the indictment and count 5 on complaint 3855/2023. Pursuant to s 13A(1) of the *Family Violence Act* 2004, I direct that each of these offences be recorded on your criminal record as a family violence offence. The State has indicated they are not proceeding further in respect of counts 1-4 and 6-8 on complaint 3855/2023. Those charges are dismissed.

As you are being sentenced for a reportable offence, I am required to make an order pursuant to s 6 of the *Community Protection (Offender Reporting) Act* 2005 unless I am satisfied that you do not pose a risk of committing a reportable offence in the future. I am not so satisfied. Given the longstanding nature of your substance and alcohol abuse issues and your poor history of offending against intimate partners generally, I could not be satisfied you do not pose a risk of acting in a like or similar way again in the future. I order that the Registrar cause your name to be placed on the Register and that you comply with the reporting obligations under the *Community Protection (Offender Reporting) Act* for a period of three years on your release from prison.

On the charges on the indictment, I impose a sentence of four years' imprisonment. That sentence will be backdated to commence on 27 April 2024. You will be eligible for parole after having served two and a half years of that term. In light of the sentence imposed on the charges on the indictment, I make no further order in respect of the charge of breach of interim family violence order on the complaint.