

MT, you have been found guilty of raping your ex partner on two occasions in the early hours of the morning on 13 November 2022. It falls to me to determine the factual basis of sentence consistent with the jury's verdicts. It was your case at trial that it was the complainant who initiated sexual intercourse. It follows from the jury's verdicts that they must have rejected that version of events and been satisfied beyond reasonable doubt of the honesty and reliability of the account provided by the complainant.

You had been in an on again, off again relationship with the complainant for approximately two years. As at the date of this offending, you and the complainant were separated. The two of you had maintained some contact but I am satisfied beyond reasonable doubt that the relationship was well and truly over when you committed these offences.

On the evening of 12 November 2022, the complainant went out with a number of friends to some nightclubs in the Hobart waterfront area. They had started drinking at the complainant's house before going out. The complainant went to O Bar with her friends during the course of the evening. When she arrived there, she saw you. She did not expect you to be there. You approached the complainant and kissed her. The two of you talked for a period of time. A, the partner of one of the complainant's girlfriends, approached the complainant and told her he did not feel well and wanted to leave. You pushed A over. Security intervened and you were removed from the venue. Shortly after, the complainant and the remainder of her group of friends decided to leave O Bar. You were still outside the venue engaging in a verbal altercation with security staff. When you saw the complainant, I am satisfied beyond reasonable doubt you started yelling at her and called her a "cunt" and a "bitch" and accused her of never loving you. She left the area. You followed her down the street and tried to engage her in further conversation. I am satisfied again beyond reasonable doubt that you were aggressive and argumentative at this stage. Her friends intervened and tried to encourage you to leave. The complainant was upset by your conduct and told you to leave her alone. Ultimately, police officers who were on duty in the area approached and you were directed to leave.

The complainant and her friends went to another venue in the Salamanca area. They remained there drinking for some time. Over the entire course of the evening, the complainant drank a lot of alcohol. She was also on a number of prescribed medications, some of which the evidence established can cause drowsiness. In the period between 12.41pm and 2.22am, you rang the complainant's phone over 100 times. You also bombarded her with text messages. Your attempts to contact the complainant were so relentless that her friends intervened and took her phone away so she would not be further disturbed by you. Before this occurred, the complainant had sent you a message asking you to leave her alone.

In the early hours of Sunday morning, the complainant took an Uber back to her home with her friend G. G had arranged to stay at the complainant's house. G's dog was also at the house. The complainant was still highly intoxicated when she headed home. She was struggling to walk and talk. During the course of the Uber ride home, the driver had to pull over to allow her to vomit outside of the car. She needed G's assistance to get back in the car. The Uber driver recalls the complainant lying on the back seat on G's lap for the remainder of the journey.

When the Uber arrived at the complainant's home, you emerged from her property. Unmoved by the complainant's request that you leave her alone, you had decided to attend her home. It must have been obvious to you that the complainant was still highly intoxicated when she returned home. She was unable to walk or talk properly. Although G initially asked you to leave, she ultimately required your help to gain entry into the house and to assist the complainant to get inside. The complainant was so incoherent she was unable to explain where the house key had been left. You helped locate the key. You carried the complainant into the house. Once inside, G again asked you to leave.

The complainant has little to no memory of the drive home. She recalls being sick and the feeling of falling out of the Uber but little else. Her next memory was of waking up in the bathroom of her home fully clothed in the bath. You were present and applying water to her face. You told her that G was trying to make you leave. You asked the complainant to let you stay on multiple occasions. I am satisfied beyond reasonable doubt that the complainant initially did not agree and wanted you to leave but that she ultimately relented. I accept her evidence that she was very intoxicated and tired and just wanted to sleep. The complainant's next memory was of sitting on her bed in her bedroom. She does not recall how she got into her bedroom. You were looking for some clean clothing for her. You helped her get changed into a clean top. Her next memory is of being in the bed with you. She has no memory of how she got into the bed. She fell asleep.

I am satisfied beyond reasonable doubt that you woke the complainant up and asked her to have sex with you on a number of occasions. I am satisfied beyond reasonable doubt that she told you no on each occasion before she passed out again. On one occasion you said to her, "The only reason you don't want to have sex is because you don't want to get pregnant". The complainant's next memory is of you taking off her underwear and rubbing against her while your jeans were on. She passed out again. The complainant then woke up with you on top of her, penetrating her vagina with your penis. This constitutes the first count of rape of which you were found guilty. The complainant did not consent to this act of sexual intercourse. She had previously told you she did not want to have sex with you. Despite that indication, and while she was unconscious or asleep, you commenced engaging in sexual intercourse with her.

The complainant was unable to do anything to stop this act occurring. She was still very drunk and could not speak. She described that her whole body was frozen and felt heavy. I accept that evidence. She passed out again. She woke up again to find you penetrating her vagina from behind while she was lying on her side. This act constituted the second count of rape of which you have been found guilty. Again, the complainant did not consent to this act as she was asleep or unconscious at the time it commenced. On this occasion, the complainant asked, "What are you doing?" You removed your penis from her vagina. The complainant again lost consciousness.

You remained at the complainant's house and in her bed until the two of you woke in the morning. The complainant confronted you about being inside her and you claimed that did not occur. You told the complainant you penetrated her vagina with your fingers but she told you she knew it was not your fingers. She ultimately persuaded you to leave her home by calling you an Uber and promising to meet with you later in the day.

Over the course of the day, the complainant talked to her friends about what happened. She reported the matter to police later that day. Throughout the course of the day, including while the complainant was speaking to police, you attempted to contact her on numerous occasions.

When she returned home later that evening after speaking with police and attending the hospital, there was a note which you had left on her door which said, "I love you more than anything. I wish you'd answer me".

You attended the police station the following day and participated in a record of interview. You told police that you had sexual intercourse with the complainant in the early hours of 13 November 2022. You claimed the complainant initiated sexual intercourse, that you engaged in vaginal sexual intercourse for about 10 minutes, but you stopped when the complainant mentioned another male's name. You claimed this upset you and that you rolled over and went to sleep. You agreed that you had pushed A at Obar because the complainant was your girlfriend and you did not want a guy to talk to her. You agreed you were jealous but said you wanted to protect her.

I have been provided a victim impact statement from the complainant. Understandably, this incident has affected her psychologically, physically and emotionally. She was a vulnerable person prior to these rapes occurring, however, her symptoms are now worse. She is medicated for anxiety. She gained a lot of weight after this incident. She has engaged with a number of different psychologists to manage her PTSD symptoms. She seldom drinks as alcohol triggers a powerful reaction and takes her back to the events of the night. She has trust issues. Her relationships with the friends that were with her that night are broken as she thought she would have been safe with them. It took her a long time to feel safe enough to consider dating anyone again. She experiences debilitating fear and does not know when this will stop. The impacts described by the complainant are all too familiar to this the Court. They are commonly experienced by victims of such offending: this is something that is well-recognised by the community. It should have been apparent to you that acting as you did had the very real potential of causing considerable psychological and emotional harm to the complainant.

You are 25 years old. You were 22 years old at the time of these offences. You have no relevant prior convictions. You were born in Iran to Afghani refugees. You have three sisters. Your family came to Australia as refugees in 2016. You were 14 years old at that time. I am told that the family situation in Iran was very difficult given your status as refugees and non-citizens. Sadly, your father died in 2018. This was a very difficult experience for your family given the short time that you had been in Australia. As the only son in the family, you have taken over the role as the head of the household. You are close to your mother and three siblings.

You attended high school in Tasmania, completing year 12. On leaving school, you have worked in a number of roles, including in construction and as a driver. I am told you wanted to join the Australian Army but could not do so until you became an Australian citizen. This occurred in 2021. You did not take any steps to give effect to this intention in the period after obtaining Australian citizenship and the offending, a period of almost two years. It is likely that your conviction for these offences will impact the sort of work you will be able to do in the future, particularly if a working with vulnerable people approval is required.

Since being charged, your mental health has deteriorated and you have found it difficult to maintain employment. I am told that a police officer involved in the investigation contacted your workplace and that your employment was terminated as a result. You have not worked since that time. You have been engaged with a psychologist since March 2024, regularly attending throughout that and the following year. The psychologist has been treating you for depressed mood, and stress and adjustment issues in the context of being charged with rape. You have also been prescribed antidepressant medication with limited benefit. You have

experienced ongoing suicidal ideation since being charged. Your psychologist has explained that your mood difficulties appear to have been triggered and maintained by these criminal charges. It is apparent that the uncertainty of your situation pending the finalisation of these matters impacted your mental health. Although I have received a number of reports from your treating psychiatrist, none of them address the potential impact of a period of imprisonment on your mental state.

Your counsel submitted that I could conclude that any period of imprisonment was going to have a significant impact on you because of your mental health difficulties. I have difficulty accepting that submission. While I accept that you have experienced what your psychologist described as significant "mental suffering" pending the resolution of your criminal matters, there is nothing before me to suggest that your experience of imprisonment will be more difficult as a consequence of those issues now that your matters have resolved. I am told that you experienced a panic attack since being remanded in custody. You were also initially placed in isolation. No doubt this was necessary in order to assess your risk of self harm in light of your previous mental health issues. I am told, however, that you are now housed in the medium security prison. It has been submitted on your behalf that you will find prison difficult given the lockdowns that occur and your removal from your family with whom you are close. This may be accepted, however, it is unfortunately not an unusual experience for prisoners.

I am also told that your family has experienced significant distress since your remand in custody. I have been provided letters confirming that your mother and two of your siblings have presented in considerable distress since then. It must be a terrible shock for a prosocial family like yours to discover that their loved one has committed such serious crimes and faces a term of imprisonment as a result. This is, of course, one of the consequences of offending in this way. Although they have expressed their distress in significant ways, in my view, this is not especially mitigating. I accept, however, that your family's reaction to your conduct may play a role in encouraging you to behave differently so that you are not the cause of such distress to them in the future and I take it into account to that extent.

Your counsel submits that the delay pending the resolution of this matter is relevant to the exercise of the sentencing discretion. I accept that significant delay between the laying of charges may be a relevant factor in sentencing, particularly if it is not attributable to the fault of the accused person.

You first appeared in the Magistrates Court on 23 January 2023. You pleaded not guilty on your second appearance on 27 April 2023 and the matter adjourned to the Supreme Court on 13 June 2023. You failed to appear on that occasion but a warrant was ordered to lie in Court until 25 July 2025 when you in fact appeared. I am told you did not appear on that earlier occasion because you were travelling overseas. Your matter was the subject of a number of bail consent letters. I am told by prosecution the file was returned to Tasmania Police on 4 August 2023 for completion. I infer that occurred after an indication was given that the plea of not guilty would be maintained. The file was returned to the Office of the Director of Public Prosecutions in late 2023. For reasons counsel for the State is unable to explain, there was no advancement of the matter for the entirety of 2024. An indictment was filed on 15 January 2025 and Crown papers were filed shortly thereafter. The trial proceeded on the first occasion that it was listed as priority trial, commencing on 18 May 2026, that is, just short of three years after you first appearance in this Court.

Your counsel relied on the Court of Criminal Appeal's decision in *Prehn v R* [2003] TASSC 55 and other cases in support of her submission that delay is mitigating in this case. In *Prehn*, Crawford J pointed out that delay is not mitigatory *per se* but may be taken into account if it is not attributable to the fault of the accused. Where that is the case, weight can be given to evidence of rehabilitation demonstrated by the accused and that they have been left in a state of uncertainty as to what may happen when they come to be sentenced for offences committed some years before. Where the delay is significant, it may amount to a powerful mitigatory factor in an appropriate case.

The issue of delay has been considered more recently by the Court of Criminal Appeal in *Lockwood v Tasmania* [2025] TASCCA 6 and *Davidson v Tasmania* [2019] TASCCA 9. In the former case, Jago J noted that "it is important to remember, however, the delay must be unnecessary" in "the sense that the resolution of the matter has taken more time than is usually the situation given the nature of the matter". In *Davidson*, Wood J at [4] noted that the delay of three years and three months in the case that she was dealing with was not unusual for that type of matter. Matters such as listing considerations, including priority given to the trials of those not on bail but held in custody, are relevant factors when considering whether there has been unreasonable or undue delay relevant to sentencing purposes.

It is inevitable that a period of time will elapse before a trial can take place where an accused person pleads not guilty. It is desirable that the prosecution of matters committed to this Court occur as quickly as practicable. In this case, it took prosecution one and a half years to file an indictment following your first appearance in this Court. Following the filing of the indictment, in my view, the trial was listed at the first reasonable opportunity in light of the number of other matters this Court is required to deal with and listing considerations such as the age of the matter, whether the accused person is in custody and the known vulnerability of the complainant or accused. The time taken by the State to file an indictment was excessive given the relatively straightforward nature of the case and the absence of explanation for significant parts of that period of time. I do not, however, consider it to be so excessive as to warrant the extension of an undue degree of leniency. I accept there is no suggestion that you have breached the bail conditions or the family violence order in place for the protection of the complainant. I accept you have found the delay between charging and resolution of the matter distressing. These are factors I propose to take into account in my assessment of your prospects of rehabilitation and the orders I make, including as to parole eligibility.

Your offending was very serious. You took advantage of the complainant's vulnerable state, brought about by her level of intoxication of which you were patently aware. You were aware that she had been vomiting. You knew she required assistance to get from the Uber to her house. Despite her vulnerable state and the requests she made over the course of the evening that you leave her alone, you proceeded to take advantage of her and engaged in two separate acts of sexual intercourse. Your attempts to engage the complainant in further contact with you before and after the offending was unrelenting. It appears you were not accepting of the end of your relationship. The way you acted that night suggests you felt some entitlement over and ownership of the complainant. Your conduct towards the complainant's friend A and the reasons you provided to police for pushing him over is a case in point. You were selfish and thinking only of your own sexual gratification when you raped the complainant. I am satisfied beyond reasonable doubt that you were well aware she was asleep or unconscious when you commenced engaging in sexual intercourse with her on both occasions.

Rape is an inherently serious crime. It involves the violation of the bodily integrity of the victim and is fundamentally degrading. It generally calls for the imposition of a period of imprisonment to reflect the need for punishment, to vindicate the victim and deter others from similar conduct. In your case, there are factors that make your offending particularly serious. I accept the State's submission that this has occurred in a family violence context. Your counsel did not attempt to argue otherwise. Accordingly, I declare pursuant to s 13A of the *Family Violence Act* that these are family violence offences. As family violence offences, there is an element of breach of trust inherent in your conduct. The breach of trust in this case is exceptionally grave in circumstances where you took advantage of the complainant's obvious vulnerability. There is no evidence before me of remorse, contrition or insight. You are a relatively young adult and have no relevant prior matters. I accept that you did cease raping the complainant when she questioned what you were doing. The state of the evidence is such that I am unable to find how long you engaged in sexual intercourse with the complainant without her consent. Accordingly, I will sentence you on the basis that the two separate acts of sexual intercourse constitute a single course of conduct occurring over a relatively brief period of time.

As you are being sentenced for reportable offences, 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 your conduct in the face of the complainant's clear indication throughout the evening that she wanted you to leave her alone and your apparent sense of entitlement to act in the way you did, I could not be satisfied you do not pose a risk of acting in a similar way again in the future. As you are being sentenced for two Class 3 reportable offences, the maximum period of order that I can make is for the remainder of your life. I am satisfied a lifetime order is not required in this case. 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.

MT, you are convicted on both charges of rape. The only appropriate sentence in the circumstances is one of imprisonment. I take into account all matters and impose a global sentence of three years imprisonment backdated to 21 May 2026 when I first remanded you in custody. I order that you not be eligible for parole until you have served half the term.