

***Director of Public Prosecutions v P* [2007] TASSC 51 (26 June 2007) – Supreme Court of Tasmania**

‘Following harassing, monitoring’ – ‘Manifestly inadequate’ – ‘Mitigating factors’ – ‘People affected by substance misuse’ – ‘Physical violence and harm’ – ‘Pregnant women’ – ‘Rape’ – ‘Risk factor - separation’ – ‘Sentencing’ – ‘Sexual and reproductive abuse’

Charge: Rape

Appeal Type: Appeal against sentence

Facts: The respondent’s relationship with the complainant ended. The complainant attempted to maintain a friendship with the respondent but he could not accept that the relationship was over. He kept coming to her home and tried to kiss and cuddle her. She would sometimes relent to avoid an argument. She was pregnant with his child at the time. On the night of the offence, he arrived at the complainant’s home intoxicated. She asked him to leave but he refused. He stopped her from calling a friend. He then refused to allow her to go to the toilet, forcibly pinned her to their bed and raped her. She eventually stopped resisting and he stopped after about 5 minutes. The rape resulted in lasting psychological impacts on the complainant. The respondent had a long record of offending, including offences of violence and threatened violence. He was sentenced to two years’ imprisonment.

Issue: Whether the sentence was manifestly inadequate.

Decision and Reasoning: The appeal was upheld. Crawford J (with whom Slicer and Evans JJ agreed) held that a sentence of two years is low for the crime of rape, which is ‘*a crime of violence, domination and degradation and it usually causes great psychological trauma to the victim. It requires a substantial sentence of imprisonment in most cases. Leniency may be extended in exceptional circumstances, but there were none in this case*’ ([16]). His Honour was of the view that it is conceivable that a crime committed ‘during the currency of a sexual relationship’ might allow some leniency, but the fact of a prior sexual relationship is not a mitigating factor and the appellant’s disappointment about the relationship breakdown is not relevant to sentencing: ‘In no sense was his crime an act of unrequited love.’ ([16]). Evans J also noted that, ‘*it is significant that the respondent’s criminal conduct cannot be categorised as an impetuous response to the break-up of his relationship with the complainant and a manifestation of his love for her. His conduct over the period of in excess of an hour after she first asked him to leave bears all the hallmarks of an assertion of physical and sexual dominion over the complainant*’ ([23]). The respondent was re-sentenced to three years’ imprisonment with a non-parole period of 18 months.