

***R v Collins* [2020] NSWDC 276 (5 June 2020) – New South Wales District Court**

‘Appeal against sentence’ – ‘History of abuse’ – ‘Indecent assault’ – ‘Obsessive behaviours’ – ‘Separation’

Offences: Indecent assault; The appellant requested that the learned Magistrate take into account two additional offences on a Form 1, they being, that on the same date and in the same place, the appellant:

- (a) intimidated Kristy Rochester with the intention of causing her to fear physical or mental harm, contrary to s 13(1) of the Crimes (Domestic and Personal Violence) Act 2007 (NSW); and
- (b) assaulted Kristy Rochester, contrary to s 61 of the Crimes Act 1900 (NSW).

Proceedings: Appeal against sentence

Facts: The male appellant and female victim had been married since 2003 and had a child together. They divorced in 2008 but recommenced a relationship in 2014 and started living together. In 2015, the appellant assaulted the victim, giving rise to an Apprehended Violence Order. In July 2017, their relationship began to deteriorate. In the lead up to the offending, the victim obtained alternative accommodation and was in the process of moving her belongings. One night, the appellant exchanged text messages with the victim, requesting they have sex (though acknowledging that the victim was moving on), but the victim refused. The appellant went to the lounge room where the victim was on the couch listening to music on her phone, took her phone and refused to give it back unless they talked. The couple began yelling and the victim felt scared so she picked up a knife and told the appellant that she would stab him if he came near her. The appellant left the home with the victim’s phone and refused to return it. The victim slashed two tyres on the appellant’s car then went back inside and locked all the windows and doors, except for a window in her bedroom. The appellant accessed the victim’s phone then returned to the house and demanded she speak to him outside. The victim complied as she was afraid of the appellant, the appellant throwing a beer over her when she got there.

After this, the victim drove to a nearby lookout and fell asleep. The appellant arrived in his truck and parked the victim in so she could not drive away. The appellant demanded that the victim open the doors. She complied as she was afraid. The appellant grabbed the victim's hair and told her that she had to talk to him to get her phone back. They returned to the house separately and the appellant told the victim he wanted to talk to her in the bedroom. He told her to lie on the bed; she complied. He then started touching her, took her clothes off, pinned her wrists above her head, rubbed his groin all over her and ejaculated on her, despite her cries that she did not want to engage in sexual activity. The appellant told the victim to leave, which she did. The appellant was convicted and sentenced to 21 months' imprisonment with a 12-month non-parole period.

Judgment: The judge dismissed the appeal, holding that the sentence could be regarded as "lenient" [65]. Her Honour rejected that the appellant's conduct involved a low level of criminality [59] and further held that there was a greater need for personal deterrence and retribution in this case [61]. Her Honour held that, "whilst acknowledging the relevance of the appellant's rehabilitation, that consideration is subordinate to the considerations of general deterrence, denunciation and the imposition of adequate punishment, which factor recognises the indignity inflicted upon the complainant" and that "the safety to the community is not seriously imperilled by the appellant if a penalty other than full-time incarceration is imposed. But that consideration is not, in my opinion, paramount in the circumstances of this case" [64].

Her Honour found that the appellant's contention that the sex occurred as 'make-up sex' was a "rank distortion" of what objectively occurred, because the relationship had completely broken down [27]. The appellant did not wish for the relationship to have ended as it did, "So he resorted to the exertion of psychological and physical force against the complainant in order to get her to do what he wanted her to do" [28]. Her Honour found that the appellant knew his conduct was non-consensual and there was nothing to suggest the victim wanted to make up with the appellant [30], and that there was a "humiliating overtone" to the activity [31]. As such, her Honour held the conduct to be above the mid-range of objective gravity [32].

Her Honour rejected the contention that the appellant was sorry for his conduct and had acquired real insight into the wrongfulness of his conduct [47]. However, her Honour found that the likelihood of reoffending was low [55].