

***DPP v Vickers (a pseudonym)* [2021] VCC 445 (16 April 2021) – Victorian County Court**

‘Coercive control’ – ‘Detention for a sexual purpose’ – ‘Low cognitive functioning’ – ‘Moral culpability’ – ‘Objective seriousness’ – ‘Offender in relationship with victim from under the age of 16’ – ‘People affected by trauma’ – ‘Rape’ – ‘Separation’ – ‘Suicide threat’ – ‘Young people’

Charges: Rape (rolled up charge, 3 separate incidents) x 1; Detention for a sexual purpose x 1.

Proceedings: Sentencing.

Facts: The male offender was 23 years old at the time of the offending and the female victim, his partner, was 32 years old. The offender had been groomed by the victim since he was a child, with sexual and then de facto marital relationship commencing when he was a child.

Issues: Sentence to be imposed.

Decision and reasoning: A total effective sentence of 6 years and 9 months was imposed, with a non-parole period of 3 years and 10 months.

The court noted the seriousness of rape as an offence. The objective gravity of the offender’s offending (as rolled-up charges) was high.

The court noted at [41] that: “This case is an example of controlling and violent conduct borne out of an inability to accept and negotiate the end of the relationship – culminating in the heinous and devastating offence of rape. It is reprehensible conduct of the highest order and must be deterred and denounced.” And at [42]: “The impact upon the victim also needs to be given proper weight in the exercise of my sentencing discretion. Your victim states that she has had suicidal thoughts, has been diagnosed with anxiety, depression and PTSD, and is having counselling. The offending has also impacted the children, who are anxious and withdrawn.”

Age disparity between the offender and victim alone would have had limited impact in assessing the circumstances of the offending and offender’s moral culpability. But, in combination with the following factors, the circumstances of the relationship were more significant:

- > The offender was diagnosed with ADHD in Grade 3;
- > He had difficulties at school and is dyslexic;
- > He suffers hearing impairment, requiring hearing aids;
- > He has low intellectual functioning;

- > He became a father when he was a child and by 20 was working to support a house of three children;
- > To some degree, the offender was subject to some manipulation/control in the form of managing his medication and access to hearing aids, particularly leading up to the offending;
- > The relationship was his first sexual relationship. It was his “only experience of a relationship and your attitudes and strategies for dealing with conflict have been shaped within a relationship that commenced when you were a child.”

The offender required specific deterrence, treatment and programs to ensure he did not repeat this offending. Denunciation and general deterrence were also important sentencing considerations: “All potential perpetrators who may feel aggrieved within a domestic relationship and who lack the skills, intelligence, maturity and emotional control to relate to a partner or ex-partner in anything other than a violent and controlling way – must be deterred” at [55].