

***DPP v Jenkins* [2020] VCC 749 (4 June 2020) – Victorian County Court**

‘Covid-19 pandemic’ – ‘Following, harassing and monitoring’ – ‘Guilty plea at commencement of trial’ – ‘History of domestic violence’ – ‘Lengthy procedural history’ – ‘Obsessive and controlling behaviour’ – ‘People affected by substance misuse’ – ‘Persistent offending’ – ‘Physical violence and harm’ – ‘Rape’ – ‘Self-represented litigants’ – ‘Separation’ – ‘Sex offender registration’ – ‘Significant criminal history’ – ‘Stalking’

Charges: 11 charges, including rape x 2; destroying or damaging property x 1; causing injury intentionally or recklessly x 1; threats to kill x 3; assault x 3; stalking x 1

Case type: Sentence

Facts: The majority of offending was committed against Ms Burgess (the victim), with whom the male accused was in an intimate relationship ([12]). Their relationship was marred by excessive drug and alcohol consumption, physical and sexual violence and stalking. The accused regularly argued with the victim about his paranoid suspicions concerning her infidelity ([13]). The controlling and obsessive behaviour became more severe over time. On one occasion, the victim threatened to stab him before self-harming, demonstrating the level of stress she was suffering at the time ([17]). The accused’s controlling behaviour continued. He checked her emails and social media accounts, accessed her phone without permission and tracked her location. He also broke her phone after she refused to give it to him ([18]-[20]).

On 5 October 2017, he raped ([23]-[24]) and physically abused the victim ([25], [27]) and threatened to cut her throat ([26]). A week later, he pushed the victim to the ground after she had told him that their relationship was over and demanded him to leave the premises ([29]). After this incident, the accused was arrested, and released on bail with conditions prohibiting contact with the victim ([30]). Despite this order, he continued to text and ring the victim, track her location and loiter near her home. One evening, the victim allowed the accused to enter her house, where he accused her of sleeping with other people, physically assaulted her and grabbed her phone ([34]-[40]). The accused continued to contact the victim, causing further distress and fear, and later threatened to cut the victim’s and a police officer’s throat ([41]-[43]).

There was a significant delay in resolving the matter, and the accused was unrepresented for most of the proceeding, including the plea hearing. His guilty pleas were entered at the commencement of trial ([51]-[52]). The Court held that "the fairest and most appropriate course" was to ensure that he was not punished for adopting a "somewhat uncooperative approach" ([56]), and that his guilty pleas still entitled him to a sizeable reduction in sentence ([57]).

Held: The accused's personal circumstances and criminal history are discussed at paragraphs [58] to [75]. He abused alcohol and drugs from an early age, and had previously seen doctors for drug dependency, depression, drug psychosis and attempted suicides. Although he had suffered numerous head injuries, a neuropsychologist concluded that he did not have an acquired brain injury ([64]-[65]). He also has a significant criminal history, including past convictions for recklessly causing injury, indecent assault, contravening a family violence intervention order, and making threats to kill ([69]-[70]). He has also been convicted of a number of offences against former intimate partners and has breached a family violence safety notice on several occasions ([71]-[73]).

The Court found that the accused's conduct was "absolutely appalling". He had "gained [the victim's] trust and formed an intimate relationship with her only to go on to degrade and demean her at the whim of [his] paranoid obsessions". The rape, assaults and threats to kill demonstrated the kind of behaviour to which she was subject for the duration of their relationship ([85]). The rape was particularly serious, because it was committed in the context of an initially trusting and intimate relationship, and involved the use of force and violence ([86]). The charge of stalking was also serious as the accused went to great lengths to control and abuse the victim in a "pathologically unfeeling" manner. He also knowingly disregarded court orders intended to protect the victim from his conduct ([87]). The Court assessed his moral culpability for the offending as "very high", and accepted the prosecutor's submission that the physical and sexual violence he inflicted on his partner requires just punishment and strong denunciation ([88]). Further, the accused had prior convictions, indicating a tendency to treat intimate partners violently ([89]). The accused appeared to have some "incipient insight" into his conduct and the necessary steps to address his drug problem and attitude towards women ([92]). Whilst he apologised for his behaviour, the Court did not place a great deal of weight on that assertion as there was no evidence that indicated that he was genuinely remorseful for the harm caused to the victim. The Court was also not confident of his prospects for rehabilitation, but took into account that any sentence imposed must not be crushing ([93]).

Consequently, the Court granted the Crown's application to have the accused report under the Sex Offenders Registration Act 2004 for the "rest of [his] life" as he poses a real risk to the sexual safety of women ([95]-[101]). He was convicted of all charges (except one count of rape), and was sentenced to a total effective sentence of 9 years' imprisonment with a non-parole period of 7 years ([115]).