

IN THE COUNTY COURT OF VICTORIA

Revised
Not Restricted
Suitable for Publication

AT MELBOURNE
CRIMINAL DIVISION

Case No. CR-13-00419

DIRECTOR OF PUBLIC PROSECUTIONS

v

VINOD JOHNNY KUMAR

<u>JUDGE:</u>	HER HONOUR JUDGE HAMPEL
<u>WHERE HELD:</u>	Melbourne
<u>DATE OF HEARING:</u>	6 November 2013
<u>DATE OF SENTENCE:</u>	20 November 2013
<u>CASE MAY BE CITED AS:</u>	DPP v Kumar
<u>MEDIUM NEUTRAL CITATION:</u>	[2013] VCC

REASONS FOR SENTENCE

Subject:
Catchwords:
Legislation Cited:
Cases Cited:
Sentence:

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the DPP	Dr N. Rogers SC	Office of Public Prosecutions
For the Accused	Mr P. Kilduff	Robert Stary Lawyers

HER HONOUR:

1. Vinod Johnny Kumar, on 21 March 2012 you were charged with multiple counts of rape and other sexual offences alleged to have been committed by you on a number of profoundly disabled people who were in your care at supported accommodation provided by Yooralla. You denied those charges. A year later, in March 2013, three days into a contested committal and whilst the third of the complainants was undergoing cross-examination, you instructed your counsel to offer pleas of guilty to all charges. After receiving advice, orally and in writing from your lawyers about the significance and consequences of entering guilty pleas, and signing an acknowledgement you had received and understood that advice, there was no further cross-examination of witnesses, and you entered pleas of guilty to all charges. You were then committed to this court for the matter to proceed by way of guilty plea.
2. On 17 April this year you were arraigned in this court and pleaded guilty to the same charges you had pleaded guilty to at committal, namely eight charges of rape, two of sexual penetration and one of indecent act on a person with a cognitive impairment committed by a worker at a facility designed to meet her needs, and one charge of indecent assault.
3. Four months later on 19 August 2013, you applied for leave before Her Honour Judge Sexton to withdraw your guilty pleas and to proceed to trial on all charges. You gave evidence you pleaded guilty because you thought you would receive a substantially reduced sentence, and as you had since become aware that the sentence was likely to be significantly higher than what you had thought, you wished to proceed to trial. On 18 September 2013, Her Honour Judge Sexton refused the application to withdraw the guilty pleas, and refused your subsequent application for certification, a necessary step if you were to institute an interlocutory appeal to the Court of Appeal. You applied to the Court of Appeal nonetheless for a review of the refusal to certify.
4. Her Honour Judge Sexton's findings of fact were not challenged in the Court of Appeal. Her Honour was satisfied that you had been carefully and properly

advised by your lawyers before the entry of pleas of guilty when committed by the magistrate to this court, and again before being arraigned on the same charges in this court about the effect of entering guilty pleas. She was satisfied on the evidence that your pleas of guilty were unequivocal, and that you understood that by pleading guilty, you were making a true admission of guilt.

5. As the Court of Appeal confirmed, she correctly applied the principles in the High Court decisions of *Meissner*¹ and *Maxwell*,² namely that a plea of guilty constitutes an admission of all of the elements of an offence, and that is so whether the plea is entered because of a belief or recognition of guilt, or for other reasons, including to avoid worry, inconvenience, expense, or publicity, to protect family or friends, or in the hope of obtaining a more lenient sentence. Because a plea of guilty is taken to be a true admission of guilt, it will not be set aside unless it could be shown that a miscarriage of justice would occur if it were allowed to stand. Her Honour Judge Sexton found that your belief about the length of the likely sentence to be imposed was a self-induced misconception. Your lawyers had not suggested a sentence of the order that you thought might be imposed. Your belief about the likely length of sentence if you pleaded guilty was based purely on your own supposition, uninfluenced by anything they had said or done.
6. On 18 October 2013 the Court of Appeal, comprising Weinberg and Coghlan JJA and Lasry AJA heard and dismissed your application, holding there was no error in Her Honour Judge Sexton's decision, refusing leave to change your pleas.
7. Her Honour found, correctly as the Court of Appeal held, that a realisation a self-induced belief about the likely length of sentence was wrong did not render your considered decision to plead guilty one which, if allowed to stand, would amount to a miscarriage of justice.
8. The effect of that was to hold you to the guilty pleas that you had entered, and the matter was set down for a plea hearing on 6 November 2013. On that day, you filed an affidavit containing a bald denial of the offences.
9. The prosecution presented a detailed summary of the evidence contained in the depositions in respect of the charges. It was unchallenged by you, save for that

¹ *Meissner v R* (1995) 184 CLR 132.

² *Maxwell v R* (1996) 184 CLR 501.

bald denial I have referred to.

10. Having taken into account the evidence contained in the depositions, and your affidavit denying the offences, and the materials placed before Her Honour Judge Sexton and the Court of Appeal, I am satisfied beyond reasonable doubt the circumstances of the offending is as set out in the prosecution summary relied upon in the plea hearing.
11. The evidence I accept therefore establishes that the 12 offences to which you had pleaded guilty were committed by you on four people who, because of their severe levels of physical or intellectual impairment, required assistance for the most basic activities of daily living. They all lived in supported accommodation with 24 hour care, provided by Yooralla. Three of your victims lived together in a house which accommodated a total of six residents. The other victim lived in a nearby house which also had six residents.
12. In March 2009 you had begun working on a casual basis for Yooralla as a disability support worker. In August 2011 you were counselled, following two reported instances of inappropriate behaviour. One involved use of inappropriate language to a staff member. The other was more serious, and involved inappropriate, sexualised behaviour with a resident, namely twisting the nipple of a male resident. You were told you would no longer be working at a particular residence, I think the one where that resident lived.
13. Nonetheless, Yooralla continued to employ you as a casual employee. In late 2011, only months after having been counselled, you applied for a permanent position, but according to the prosecution summary, you were unsuccessful because of what was described as “rumours” of inappropriate behaviour with residents and staff. Despite that, it continued to engage you on a casual basis, but working practically full time hours, and you were often rostered on at times when you would be the only support worker at a residence. This, then, is the background I am satisfied of against which the offending occurred.
14. Charges 1 to 4 are all charges of raping a woman who I shall call Ruth.³ Ruth has cerebral palsy resulting in spastic quadriplegia. She is confined to a motorised wheelchair. She is unable to speak but able to communicate with gestures and

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A pseudonym.

spelling out words on her wheelchair tray, although she has trouble controlling her hand to point to the letters. She has some vocalisations that can be slowly understood by those who are familiar with her. She has been assessed as having borderline intellectual capacity and is vision impaired.

15. Ruth requires full assistance with toileting, feeding, showering and other personal care. She requires manual handling and must be hoisted from her bed to her chair. She must also be hoisted into a commode chair for toilet and showering. She was 40 at the time of the offending. All of the acts that I am about to recount occurred when you were the only person on duty in her home. All occurred between October 2011 and mid-January 2012.
16. Between those dates, on each of the occasions you gave Ruth a shower or put her to bed, that is about 20 times, you penetrated her vagina with your fingers. On occasions, you would also touch her breasts. Sometimes you would laugh while you were sexually assaulting her in this manner. You did not wear gloves as you were supposed to when showering a resident. This conduct is relied upon as uncharged acts.
17. In mid-January 2012, you committed the rape the subject of Charge 1. It is a discrete act of digital penetration of Ruth's vagina. On this occasion, Ruth said, it went on for longer, five minutes she estimates, instead of two. You also touched her breasts, laughed, and called her a whore.
18. Charge 2 is rape using an object, a bottle containing hair product, to penetrate Ruth's vagina. You made Ruth lick the bottle before penetrating her with it, and taunted her, saying she would not be able to say what you had done, as well as comparing the size of your penis to the size of the bottle, and speaking of the effect on her were you to penetrate her with your penis. This charge is representative of like conduct occurring approximately ten times.
19. Charge 3 is also a charge of rape using an object. All staff were required to use a pager, which was activated when residents rang the bell by their bed. You put the pager clip in Ruth's vagina and placed the pager between her legs, then made her ring her bell, which caused the pager to vibrate. Again, this charge is representative of like conduct occurring approximately ten times.
20. The final charge again is a discrete act of rape which occurred on the night of the

residents' 2011 Christmas party. You showered Ruth, speaking to her in a sexual way, and then penetrated her vagina with your fingers. She said it was really painful. You told her to stop moving around, when, as you well knew, her movements were involuntary, the product of the cerebral palsy from which she suffers. You told her to behave herself, accused her of acting like a whore, a tart and a slag. You also touched her on her breasts. She told you to stop but you did not.

21. The offending against Ruth stopped in mid-January 2012, about six weeks before you were sacked. Ruth did not tell anyone about it whilst you were employed at her residence because she was scared of you and afraid you might hurt her. She said she thought you would be angry with her if she complained about your conduct. She described you as being aggressive, bossy and a bully.
22. Charges 5 to 8 are all charges of raping a woman who I shall call Jacqueline.⁴ Jacqueline suffers from cerebral palsy and is confined to a wheelchair. She has also been diagnosed with depression with psychotic tendencies which emerged in 1993 when she began to hear voices. She has not heard voices for many years. She also suffers from congenital scoliosis of the back and Buerger's disease, a disease involving acute inflammation and thrombosis of the arteries and veins in her feet. Jacqueline requires full time care in the same manner as Ruth. She too was 40. She lived in the same residence as Ruth. Until November 2011 you had not acted improperly towards her. On an occasion in November you made a deeply offensive comment to her, telling her to clean her cunt. She reported you to another staff member. It was after this that the sexual offending against her began.
23. Charge 5 is one of rape by digital penetration. As with Ruth, this occurred when you were showering Jacqueline. You did not wear work gloves as you were supposed to. She said to you "what are you doing? Stop that please". You did not stop instead saying "don't you like this? You know you do". This charge is representative of like conduct on 10 to 12 occasions. Jacqueline said you would often say to her before you penetrated her "you want it, I know you do". You implied she was a prostitute, suggesting she wanted money in return for what you

⁴ A pseudonym.

were doing to her. At times you would call her a whore or other pejorative names. She would say to you "please don't do it anymore". You would promise not to do it again, but continued to do so. She said you would often place your hand over her mouth so she could not call out.

24. Jacqueline said that almost every time you were rostered on you would, as she described it, harass her with comments such as "I'm doing a night shift. You won't get much sleep. I'll wake you up and have my way with you all night. I feel horny. I've got something that wants to come and say hello, do you want to see it". You called her names, and caused her deep distress by threatening to put her pet bird on the barbecue. She called it harassment. Properly speaking it is a cruel demonstration to her by you of her powerlessness, subjecting her to debasing and degrading words and conduct, and cruel threats to sexually assault her when you had her at your mercy.
25. Charge 6 is a charge of penile anal rape. On an occasion when you were showering Jacqueline and she was suspended in the hoist, you digitally penetrated her and then attempted to insert your penis into her anus. You moved her to her bedroom and whilst still in the hoist again attempted to insert your penis into her anus. You lowered her into her bed and placed her on her side. She is unable to change position in bed. You again tried to penetrate her anus with your penis and were again unsuccessful. You rolled her over onto her stomach, a position in which she never lies, and this time succeeded in anally penetrating her with your penis.
26. Charge 7 is a charge of penile vaginal rape. It occurred on an occasion when you had put Jacqueline into her bed for the night. You then penetrated her, continuing until you ejaculated. She remonstrated with you, telling you you were hurting her. When you finished you said to her "if you tell anyone about this I could lose my job. If you say anything I'm just going to say that it was consensual the whole way".
27. Charge 8 is a charge of penetrating Jacqueline's mouth with your penis. She needed to go to the toilet. Once the hoist had been used to place her on the toilet she was able to be left alone. She would use her pager to buzz when she had finished. Instead of leaving her alone until she paged you, you entered the toilet on three separate occasions, saying to her "have you finished yet? I'm feeling that

way again. Do you want to see it? It's only you and me here. You'll regret it if you don't". On the third occasion you asked her for oral sex. You pushed your penis into her mouth, and then complained, saying she was biting you. You instructed her to open her mouth wider so you could get it all in. She told you she could not do it anymore but you ignored her, instead forcing her head forward and down onto your penis. When you had finished you simply left her there.

28. Jacqueline remained in the toilet for an hour and a half until your shift finished and the night staff arrived. The following day when you were again on duty she told you that she had stayed in the toilet so long because she did not know what to do, that she did not want you to come and get her off the toilet even though she had finished.
29. Jacqueline did not complain to anyone at the time. She did not think she would be believed as it was her word against yours. She did however say to the team leader on a number of occasions, and to other carers, that she did not want you to assist her, saying that you were rude and bossy.
30. Charges 9 to 11 concern a woman who I shall call Kimberley.⁵ Kimberley suffers from cerebral palsy as a result of hypoxic brain injury at birth. She is difficult to understand without the assistance of a person who is familiar with her. Her visuomotor ability is impaired. She suffers from depression and has a history of epilepsy. She has a cognitive impairment such that she falls within the definition of s.50 of the Crimes Act 1958. She also requires full time care in a similar manner to Ruth and Jacqueline. Kimberley was 38.
31. She lived in a different house to the one that Jacqueline and Ruth were in. The acts the subject of these charges occurred on a single occasion, 21 December 2011. You had taken Kimberley to the toilet, pulling her pants down and transferring her to a commode chair which was then placed over the toilet. As was customary she was left there with a towel covering her genitals. She could not wipe herself, and she would call out when she was ready to be wiped, and re-dressed. On this occasion, she called out when she was finished and ready to be assisted out of the toilet. You came in and placed your hand over her mouth and your finger to your lips, telling her to be quiet. You exposed your penis to her and

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A pseudonym.

- tried to grab her hand but she pulled away.
32. You then wiped her, but in the course of wiping her bottom you inserted your ungloved finger into her anus. It is that that constitutes Charge 9 of sexual penetration. You then penetrated her vagina with your fingers, saying to her "I know you want to do it". It is that that constitutes Charge 10 of sexual penetration. You then took Kimberley back to her room and transferred her from the commode chair back to her wheelchair. Her pants were still down. You then stood Kimberly up against you and rubbed her vagina against your jeans. It is this that constitutes Charge 11 of indecent act.
 33. Later that day Kimberley needed to go to the toilet again. You took her to the toilet and back to her room when she had finished. Back in her room your hand moved towards her vagina and she said "don't do that".
 34. About an hour later you came back to her room and apologised for your behaviour. You said "don't tell anyone about it or my mum will drop dead". You offered to give her money. She asked you to ring her counsellor. You told her she could tell her counsellor and nobody else. You threatened to come back an hour later and go to bed with her.
 35. Kimberley may be intellectually impaired but she knew what you were doing was wrong and she did not want you to touch her. She had pulled her hand away when you first exposed your penis to her and tried to grab her hand. She said that when you penetrated her vagina, that she had wanted to swear at you and tell you to "fuck off", but it is a measure of her level of cognitive functioning that she felt unable to say that because there was a rule against swearing in the residence.
 36. You, however, must have been aware that there was a risk that Kimberley would complain. You told another resident a false story: that you had said something rude to Kimberley, that you were going to apologise to her, and that Kimberly had falsely alleged that you had showed your private parts to her. Kimberley spoke to that same resident later that evening and told him that you had shown your private parts to her and touched her where you should not have. That resident told Kimberley she should tell someone in authority.
 37. Meanwhile, you left a note for the team leader at the residence who was due on duty the following morning. You gave a more detailed version of the false story

- you had told Kimberley's co-resident about saying something rude to Kimberley. You alleged that you had apologised to Kimberley but that she had sworn at you, which you said had so upset you that you were unable to concentrate at work. You asked the team leader to call you.
38. The team leader appeared to accept your story, because she immediately went and remonstrated with Kimberley for swearing in breach of the house rules. Kimberley was crying when she went into her room, but the team leader did not ask her why before she remonstrated with her, and told her that her behaviour with a staff member had been inappropriate. It is a measure of Kimberley's strength, or maybe of the impact that your behaviour had had on her, that despite the unfairness of the team leader reprimanding her without first ascertaining her side of the story, that Kimberley immediately responded to the remonstrations by alleging that you had touched her private parts and exposed yourself to her.
39. Unfortunately for Kimberley, the Yooralla response was less than adequate. Kimberley's complaint was described in a client incident report as "a sexual harassment allegation made by Kimberley against casual staff member Johnny Kumar".
40. Kimberley was taken to the police station but when she said she did not want to have a medical examination and did not want to make a statement until she had spoken to her sister she was returned to the residence. These concerns of hers about not being subjected to a medical examination and wanting to speak to her sister before speaking to the police, appear to me to be reasonable concerns given her level of intellectual disability and what she said had happened to her. Although Kimberley's sister was told of the allegations that same day and came that day to see her, it appears no attempt was made to follow up and to take a statement from Kimberley or to launch a formal police complaint or investigation after Kimberley had, as she had wanted to, spoken to her sister. It was not until a report was made to police in respect of other residents that Kimberley's complaint was followed up.
41. Meanwhile, you were stood down and three weeks later attended a meeting with Yooralla senior management. You maintained the false account that you had given your team leader and in fact demanded better support from management

when faced with residents breaching the code of conduct by swearing. Management decided that Kimberly's allegation was not substantiated as you denied it and there were no independent witnesses. You were given a formal warning and allowed to return to work the following day. The warning was not in respect of Kimberley's allegation, but in respect of the way you described your conduct. You apparently had not filled in an incident report properly or reported the matter properly and on your own account you had made an inappropriate comment to Kimberley.

42. You were rostered to work shifts at the residence where Jacqueline and Ruth lived. Two weeks after your return to work, Jacqueline told another carer that she did not want you to shower or toilet her. Ruth then said the same. They both said you were rude and bossy. You were asked to apologise to Jacqueline and Ruth for your rudeness and you did so. Jacqueline in response said "you know why I don't want you to toilet me". She maintained, despite the apology, that she did not want you to bathe or toilet her. It was only after that that the sexual assaults on Jacqueline stopped.
43. It was after the formal warning that I have just referred to following the complaint by Kimberley, and just before Jacqueline made her disclosure, that the event the subject of Charge 12 occurred.
44. Charge 12 concerns a man who I shall call Phillip.⁶ Phillip, who was 27 at the time, has cerebral palsy and has an intellectual functioning in the borderline range. He walks with the aid of a walking frame. He has limited ability to speak. He is able to say basic words such as yes, no, and can say greetings and name food items. His speech is unmodulated and loud. He mostly uses a light writer to communicate where he types letters into a machine which then sounds out or speaks out what he has written. Phillip lived in the same residence as Jacqueline and Ruth.
45. In mid-February 2012, Phillip had been out for the day, and when he returned you locked him out of the residence and teased him when he tried to gain admission. Every time he knocked on the door or rang the bell, you would open it and then close it in his face. Eventually you let him in and, as he walked down the hall, you

⁶ A pseudonym.

walked behind him repeatedly pulling his pants down, exposing the top cleft of his buttocks and saying "oh your pants are falling down here they go again". Philip kept pulling his pants up and trying to get away. This was witnessed by Jacqueline.

46. It was about a month after you had been told to apologise to Jacqueline and Ruth for your rudeness, and about two weeks after you treated Phillip in this way that Jacqueline made a disclosure to people she could trust about what you had done to her.
47. Coincidentally, at the same time you made some inappropriate comments about the residents and a staff member to a co-worker. Amongst other things you described the residents as "easy" and volunteered to this co-worker that you had put your pager between Ruth's legs. Still nothing was done to investigate or to protect the residents.
48. Matters came to a head a short time later when the staff member about whom you had made an inappropriate comment to a co-worker complained about your sexual harassment of her. Consistently with the manner in which you had sought to pre-empt matters after Kimberley had remonstrated with you for sexually assaulting her, you gave notice, stating as your reason unhappiness about the way you were being treated.
49. It was not until your resignation became effective that further disclosures were made by the residents to other Yooralla staff and it was following that that the police were contacted and a formal investigation commenced.
50. On 21 March 2012, about a month after your resignation, you were arrested and interviewed. You denied any wrongdoing in that interview and in the further interview that was conducted with you in August 2012 following the receipt of further complaints by the police about your conduct.
51. Victim impact statements were provided by all four victims. Philip used his lightbox to read his victim impact statement himself. In doing so he provided a very powerful indication of how vulnerable he and the other complainants were. Each of them articulated in their victim impact statements that they knew that what you were doing was wrong, and that they did not want to be touched and abused by you in the way they were. They were unable, by reason of their disability, to

escape, and unable, by reason of their disability, to vocalise their lack of consent, or to call for help. However their disabilities did not extend to a failure to appreciate that what you were doing was wrong. Each of them in their own way articulated the sense of violation and powerlessness they felt, and each expressed the same range of responses that we in the courts are only too used to hearing from victims of sexual assault: anger, shame, guilt, fear and powerlessness. As Dr Rogers said in the course of the plea, each of your victims were trapped within their own bodies.

52. This is offending of the greatest order and greatest gravity. It was a gross breach of trust. You were employed as a carer for these people whose vulnerability was increased because of the physical and intellectual disabilities they suffered. They were powerless to defend themselves or to physically remonstrate with you. So far as the charges of penile penetration are concerned, there is the added aggravating feature that you did not use a condom.
53. This was not opportunistic or spontaneous offending. Except perhaps in the case of Philip, it was clear that you were careful to choose your time and place, when you were the only person on duty and when your three female victims were at their most vulnerable. The offending against them occurred in the bathroom where they were dependent upon you for toileting, or at least for assistance onto and off the toilet, or in their bedrooms where again they were dependent upon you because they could not move without assistance.
54. The objective gravity of your offending is very high. The language you used to all three female victims as you sexually assaulted them was disparaging, degrading and belittling, and indicates a serious disrespect for their dignity, their rights and their autonomy. It is impossible on the materials before me to know whether it is indicative of a more pervasive misogyny, or was confined to a contemptuous disrespect for these three profoundly disabled women.
55. Although the offending so far as Philip is concerned may have been more spontaneous, it was also very cruel. He was, because of his limited mobility and his need to use a walking frame, unable to get away from you or to stop you doing what you did. That you did it to him in public in front of somebody else clearly added to the sense of humiliation and powerlessness.

56. It is clear therefore that, subject to considerations personal to you, denunciation, deterrence both general and specific, and protection of the community are significant sentencing considerations in determining what is the just punishment for this offending. No civilised community can countenance such abuse of the disabled for whom the whole community has a responsibility to care. Disabled people are entitled to have their dignity respected, to feel safe in their homes and safe with those who are entrusted with their care. The people who have had to take responsibility for making the decisions to place them in care, or to assist the disabled people to make such a decision, should be able to trust that they are safe and that they will be safe in care. The parents, families and friends of your disabled victims and of disabled people generally should be able to feel that they are safe and will be treated at all times with dignity and respect. Those who breach that trust in the manner that you have must understand that their conduct will be condemned, and that they will be sternly punished.
57. Dealing then with matters personal to you. You are 31, and first arrived in Australia in early 2007, aged 25. By the end of that year you had completed a Certificate IV in English and a Diploma in Community Welfare Work. After a short return to India, you came back to Australia in 2008. In March 2009 you began working at Yooralla on a casual basis. You continued to be employed by Yooralla until you resigned in February 2012. Following your arrest in March 2012 you have been remanded in custody. Since your remand it has been discovered that your visa had expired. Your right to remain in Australia is therefore uncertain, and I am told you have expressed a desire to return to India on the expiration of your sentence.
58. You have no other convictions in this country. As your counsel acknowledged, it was in part the absence of convictions which enabled you to obtain the employment which you exploited so shamelessly and, in the circumstances, past good character or evidence of it by absence of previous convictions does not carry as much weight as it may in other cases.
59. You told your counsel Mr Kilduff that you were born in the Punjab in India to a wealthy family, sent to a boarding school at the age of six, and had almost no contact with your family for the next ten years. You said that you had misbehaved

at school, and as punishment your father made you stay at school during the holidays. I was told you then spent a year in the cadets, which you enjoyed, and where you excelled at shooting, before being recruited at the age of 16 into an elite secret military force, where you remained for a year. You reported you wanted to train as a fighter pilot, but that your father insisted you undertake a homeopathic medicine course in New Delhi. You completed that course in four years and at the age of 21 were ordered to return to military service. You reported you were posted to Kashmir, where you narrowly escaped death when a landmine blew up. At the age of 25, I was told, you were dismissed after you were court martialled following an incident where you shot some terrorists.

60. I was told you had met a young woman when studying in New Delhi, who you wanted to marry. She too, you said, came from a wealthy family, but her parents did not approve of your marriage. Whilst you were in military service, she was diagnosed with leukaemia and, if I understood correctly, that apparently brought the relationship to an end. After your military service ended, your father arranged a marriage for you, but you refused to accept the bride chosen for you. As a result, your father disowned you and it was then that you came to Australia.

61. After obtaining your diploma in 2007, you returned to India for two weeks before returning to Australia and have been here ever since. In June 2012, after your remand in custody, your parents and brother were murdered in India by a sniper. You believe it was a case of mistaken identity and that you were the actual target. The only family therefore left in India is a sister.

62. I have no way of knowing whether this quite remarkable account of your circumstances is a truthful one. If true, you have had little experience of family life or family relationships, and have little family support to call on. Nothing was put to suggest that any of this bears on the assessment of your moral culpability, or on the weight to be given to deterrence, or, save for the matters that I have mentioned - that is, lack of family support - to hardship in custody.

63. I must sentence you therefore on the basis that you are a 31 year old man born overseas with no family or friends here and little family support in India to fall back on. Imprisonment will be more onerous for you than for a person who is supported by family and friends.

64. Your pleas of guilty have utilitarian value and I reduce the sentence otherwise appropriate on that basis. As your counsel acknowledged, the pleas do not in the circumstances provide evidence of remorse, and there is no other evidence before me indicating remorse.
65. As was acknowledged, the seriousness of the offences calls for a substantial term of imprisonment. In determining the appropriate sentences for each charge, I have imposed higher sentences for the representative charges. The charges concerning Kimberley carry a lesser maximum than those concerning Ruth and Jacqueline. They are bad examples of their type, and so bear a proportionately higher relationship to the maximum sentence than do the sentences I have fixed for the charges concerning Ruth and Jacqueline. Although each of the charges concerning Kimberley occurred as part of a single episode, there should in my view be a degree of cumulation between them because of the discrete acts involved. The sentence for the charge concerning Philip reflects its less invasive but nonetheless degrading nature. I have sought to impose periods of partial cumulation which reflects the totality of the offending concerning each victim, and reflects the totality of the overall criminality.
66. Although I know nothing of your reasons for committing these offences and no material has been put before me which bears on the risk of reoffending or your prospects for rehabilitation, I will fix a non-parole period which will allow for the prospect of supervised release at a time when those matters may be better able to be assessed.
67. You come to be sentenced as a serious sexual offender in respect of Charges 3 to 12. I accept the prosecution submission it is not necessary to impose a disproportionate sentence to achieve the paramount sentencing consideration of protection of the community that flows from that serious sexual offender declaration.
68. Can you now please stand.
69. Vinod Johnny Kumar, on the 12 charges to which you have pleaded guilty, you are convicted.
70. On Charge 1, you are sentenced to be imprisoned for a period of six years. On Charge 2, you are sentenced to be imprisoned for a period of eight years. On

Charge 3, you are sentenced to be imprisoned for a period of eight years. On Charge 4, you are sentenced to be imprisoned for a period of six years. On Charge 5, you are sentenced to be imprisoned for a period of eight years. On Charge 6, you are sentenced to be imprisoned for a period of six years. On Charge 7, you are sentenced to be imprisoned for a period of six years. On Charge 8, you are sentenced to be imprisoned for a period of six years. On Charge 9, you are sentenced to be imprisoned for a period of five years. On Charge 10, you are sentenced to be imprisoned for a period of five years. On Charge 11, you are sentenced to be imprisoned for a period of two years and six months.

On Charge 12, you are sentenced to be imprisoned for a period of one year.

71. I declare that the sentence on Charge 2 of eight years is the base sentence and I make the following cumulation orders. On Charge 1, six months cumulative upon the base sentence and the other partial cumulation orders. Charge 3, one year. Charge 4, six months. Charge 5, three years and six months. Charge 6, six months. Charge 7, six months. Charge 8, six months. Charge 9, one year. Charge 10, one year. Charge 11, six months. Charge 12, six months. That makes a total effective sentence of 18 years and I fix a period of 15 years as the time you must serve before being eligible for parole.

72. I declare pursuant to s.6AAA of the Sentencing Act, that but for your pleas of guilty, I would have sentenced you to be imprisoned for a period of 24 years and I would have fixed a period of 21 years as the time that you would have had to have served before being eligible for parole.

73. I declare that you have spent 609 days in pre-sentence detention and direct that that be reckoned as part of the sentence already served.

74. Pursuant to the *Sex Offender Registration Act 2004*, the nature of these offences requires to report for life.

75. I have been asked to make a forensic sample order and I propose to do so. That requires you to make that by way of provision of a buccal sample. That requires you to provide a sample from a rubbing on the inside of your mouth. If you do not cooperate in the provision of that sample, then the police are authorised to use reasonable force and it is at least likely that they will use the more invasive method

of obtaining that sample, namely the taking of a blood sample. Do you understand that?

76. OFFENDER: Yes.

77. HER HONOUR: I have been asked to make a disposal order in respect of the hair product bottle and I will make that order. I am required to have the reporting conditions under the Sex Offender Registration Act provided to you and I will ask my associate to give those reporting conditions now to Mr Kilduff and for him to give them to you. You are asked to sign a receipt acknowledging that you have received those reporting conditions. You are not required to sign the receipt. The court record will note in any event that you have been given the notice of reporting conditions. Whilst that is being done, Dr Rogers, can you check the arithmetic and make sure that it is correct?

78. MR KILDUFF: I have checked mine, Your Honour - - -

79. HER HONOUR: You have checked the arithmetic and that is - you are satisfied it is correct?

80. MR KILDUFF: Yes.

81. HER HONOUR: Thank you, Mr Kilduff.

82. DR ROGERS: I have checked that and it appears to be correct.

83. HER HONOUR: Thank you. You are actually required to leave those reporting conditions with him, not take them yourself.

84. MR KILDUFF: I was going to take them down to him, Your Honour? I was going to go and see him after this.

85. HER HONOUR: My understanding under the Act is that I have got to make sure they are physically handed to him in my presence.

86. MR KILDUFF: I will do that, Your Honour.

87. HER HONOUR: Thank you. I note that the receipt has been signed. Any further orders?

88. COUNSEL No, Your Honour.

89. HER HONOUR: Thank you. Remove Mr Kumar please.

90. - - -