

Sexual Intercourse Without Consent

Victim Aged 16 Years or Older

Non-custodial Sentence

s.61I (NSW) *Crimes Act*

s 61I Sexual intercourse with another person without consent of the other person knowing the other person does not consent

Maximum penalty: 14 years

Standard non-parole period: 7 years (for offences committed on or after 1.2.2003)

Commenced: 17.3.1991

	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
1.	Qin (52) [2008] NSWCCA 189	s.61I Indecent ass	VG	10m suspended 5y GBB	Crown AD	Prior s.10 for indecent assault	SNPP 7 years Masseur at clinic removed underpants of female customer – massaged bottom cheek and passed hand over anus – massaged vagina – almost at lowest level of culpability – breach of trust Crown appeal: no error in finding of objective seriousness almost at lowest level – sentence not outside discretion of SJ
2.	DPP v Burton (61) [2020] NSWCCA 54	s.61I	PG	3y Community Corrections Order	Crown AD	Nil	SNPP 7 years Offender sexually assaulted 18y niece after offender's son's wedding – offender, complainant and family drinking in bar after wedding – offender took intoxicated niece upstairs to his room and laid her on bed – kissed lips of vagina with his lips, not tongue, for 10-15 seconds – aware offender's wife and complainant's mother following them to room - spontaneous, impulsive and opportunistic offence committed while offender also intoxicated – immediate confession to police – reckless as to consent Resident of Western Australia On appeal – SJ erroneously took into account intoxication – whether abuse of trust – relevance of interstate offender to choice of non-custodial sentence - sentence lenient but Crown failed to establish Court should exercise discretion to vary sentence

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	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	INVOLVEMENT & SUMMARY
3.	Hewitt (21) [2020] NSWDC 566 Wilson SC DCJ	s.611	VG	3y Community Corrections Order		nil	Digitally penetrated female friend while both lying on lounge at friend's house – complainant awake to feel penetration having not given consent – reckless as to consent – opportunistic – stopped immediately upon request - minimal harm Mental health issues impacting sentence – very good prior character – risk of re-offending virtually zero – excellent prospects of rehabilitation – Engineering student
4.	Francis (57) [2020] NSWDC 870 ML Williams SC DCJ	s.611	VG	2y Community Corrections Order		Minor traffic offences	Offender and complainant both members of running group and attended organised run in country town – offender attended complainant's hotel room alone by invitation -complainant went to sleep and awoke in bed with offender who admitted cunnilingus had occurred for less than a minute – jury rejected consent had been given – not planned or organised – below mid-range Served in Australian navy for twenty years – prospects of rehabilitation very good - steps taken to deal with alcohol abuse – remorse - sexually abused at 15y – ASD
5.	Kramer (26) [2023] NSWCCA 152	s.611	VG	2y Community Corrections Order	Crown AD	Nil	SNPP 7 years Met complainant through dating app - engaged in consensual sexual activity at home of offender – forced penile / vaginal intercourse – aware complainant had made clear several times she did not consent to intercourse – no violence or threats Prior good character – solid prospects of rehabilitation – mental health issues Held: error in finding objective seriousness just above low range – sentence manifestly inadequate but dismissed appeal in view of completion of community service hours
6.	Brannen (20) [2023] NSWDC 356 Tupman DCJ	S.611	PG (25%)	2y Community Corrections Order		Nil	SNPP Continuation of initially consensual penile-vaginal intercourse in context of ongoing relationship between offender and 16y victim – accepted actual knowledge she had said stop but continued for a couple of minutes where 'accidentally got caught up in the moment' – no additional violence or callousness – equals in relationship despite age difference – spontaneous – nearly at bottom of range Excellent subjective features – almost immediate acceptance of responsibility – remorse – good character – offence out of character – excellent prospects of rehabilitation – low risk of re-offending – anticipated onerous custodial conditions Comment on sentence: non-custodial sentence unusual but not unique – JIRS stats show CCO imposed in 4% of 302 cases

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From [Francis \[2020\] NSWDC 870](#) citing [HJS \[2020\] NSWDC 480](#)

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7.	Stacy (18-20 range) NSWDC 30.8.2019 Ellis DCJ	s.61	PG	3y Community Corrections Order	Crown AD	Nil	Francis [2020] NSWDC 870 at [54] From HJS [2020] NSWDC 480 at [61] – facts provided by Crown - described as having history of some relationship and degree of miscommunication
8.	JS (Saddler) (18) NSWDC 5.4.2019 Yehia SC DCJ	s.611	PG	3y Community Corrections Order		Nil	Francis [2020] NSWDC 870 at [54] 18y offender and 20y complainant - known each other through family for years - entirely age-appropriate relationship prior to offending - can be more sensibly understood without being excused as being brought about in part by mixed messages From HJS [2020] NSWDC 480 at [58] – facts provided by Crown - described as having history of some relationship and degree of miscommunication
9.	Russell (38) NSWDC 15.3.2019 Marien ADCJ	s.611	PG	3y Community Corrections Order		Nil	Francis [2020] NSWDC 870 at [55] 28y complainant - been friends with offender for seven years – in circumstances of music festival where much alcohol was consumed complainant willingly performed fellatio on offender - whilst unconscious due to alcohol complainant came to with offender penetrating her from behind From HJS [2020] NSWDC 480 at [59] – facts provided by Crown – described as having history of some relationship and degree of miscommunication.

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