

Accused pleads guilty, but judge says maybe not

DEGREES OF RAPE

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COURT REPORTER

A JUDGE has suggested a man who continued to perform sex acts upon a drunken woman after she passed out is only guilty of "technical rape" and therefore not deserving of a prison sentence.

District Court Judge David Smith yesterday refused to sentence Matthew James Sloan - who pleaded guilty to one count of rape - as scheduled, saying he was "troubled" by the case.

He questioned the fairness of convicting Sloan for the offence, saying it would "mark him for the rest of his days" as a rapist.

"Rape is a horrible offence ... I suggest that this is a technical rape," he said yesterday.

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DEFINITIONS
from the Macquarie dictionary

rape / noun
2. the act of having sexual intercourse with any person against his or her will.

technical / adjective
6. so considered from a strictly legal point of view or a rigid interpretation of the rules.

Guilty plea, but judge says maybe not

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"This is not a situation where an offender perpetrated a sex act on an unconscious victim, which she would not have consented to had she been conscious.

"To mark this man with the grave offence of rape for the rest of his days will stop him travelling to some countries and prevent him getting jobs."

Sloan, 29, of Highbury, pleaded guilty to raping a woman in the city's east parklands in 2008.

During sentencing submissions a fortnight ago, the court heard he met his victim at a pub near the

city's east parklands and drank with her while having a conversation.

Laura Finnegan, for Sloan, told the court the woman "willingly" went into the parklands with her client. "After a few minutes they started touching each other sexually," she said.

"The victim took her pants down and Sloan (performed a sex act).

"At some point while that was occurring, Sloan has noticed that the victim has appeared to pass out or fallen asleep - she had been consuming alcohol earlier, he believed she was somewhat intoxicated.

"When she appeared to have fallen asleep or passed out, Sloan

continued to (perform the sex act)."

During that same hearing, prosecutor Lucy Boord tendered a statement of agreed facts to the court - a document, signed by prosecution and defence - that outlined the facts of the case. She also formally withdrew the victim's own statement from the court file.

Asked by Judge Smith if that meant the Crown agreed "there was some sexual activity before the victim fell asleep", she said that was the case. She also agreed that sexual activity was as Ms Finnegan had described.

Ms Boord said Sloan's actions were serious enough to warrant an

immediate jail term, but conceded it would not be an "error of law" were he to receive a suspended sentence.

Sloan was due to be sentenced at yesterday's hearing. Judge Smith, however, declined to do so.

He said he was concerned the statement of agreed facts did not totally reflect the earlier submissions made by Ms Finnegan. The court heard she has since taken up a position with the Crown.

"I would put this offence at the lower end of the scale because the (sex act) began as a consensual one before the victim passed out and became incapable of consent-

ing," Judge Smith said. "There is an inference that she might have consented (to more sex) had she been awake. The issue I have to resolve is whether I should even impose a suspended sentence here, that's my problem."

He declined to sentence Sloan, saying he needed more time to consider the matter.

"I'm troubled by this," he said.

"I've got you to consider, Mr Sloan, but also the victim and the public's perception."

He remanded Sloan on continuing bail until next week.