

Sex crime: two men jailed for transmitting HIV

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In separate cases, two men – one each in NSW and Queensland – have received lengthy jail sentences after being found guilty of crimes related to transmission of HIV to their partners.

While laws criminalising transmission of HIV have been on the statute books in all states for many years, the handing down of two verdicts just a week apart, and the severity of the sentences imposed – have highlighted the legal risk associated with unprotected sex for people living with HIV/AIDS.

Most positive people can take comfort from the fact that in both these cases the circumstances of the guilty men's actions were highly deceptive, however they do provide an important reminder of the need to be aware of the potential legal implications of unsafe sex.

Kanengele-Yondjo

The first case concerned a refugee from the Democratic Republic of Congo, Stanislaus Kanengele-Yondjo a 42-yearold father of five, who has lived in Australia since 1993.

According to the evidence presented to the Court, in 1999 a woman who had recently tested positive for HIV identified him as the likely source of her infection. He was contacted by the Albion Street Centre and subsequently tested positive. The doctors at the Centre informed him of his legal responsibilities during his post-test counselling.

In 2003, Kanengele-Yondjo had brief relationships with two women, one Irish and one German, both visiting Australia on working holidays. Both women subsequently contracted HIV, leading to Kanengele-Yondjo's arrest in 2004.

Prosecutors originally sought to bring two charges of 'maliciously causing a grievous bodily disease', a crime introduced in NSW in 1990, which could have led to a sentence of 25 years for each count. But because of the difficulty of proving that Kanengele-Yondjo intended to infect the women, those charges were dropped and he was charged with a less-serious crime of 'maliciously inflicting grievous bodily harm', with a maximum sentence of seven years for each count.

The Court heard that Kanengele-Yondjo resisted the women's requests that he wear a condom during sex, that he told them that he had no sexually-transmitted diseases, and that on at least one occasion he removed the condom he was wearing during sex. He told one of the women "I would never do anything to hurt you" and insisted that he was regularly tested for HIV.

Kanengele-Yondjo was sentenced on 1 December to 12 years' jail with a non-parole period of nine years – the longest sentence ever handed down for this type of crime.

"To have subjected innocent persons to your own horror demonstrates a poverty of spirit and moral bankruptcy that beggars belief," District Court Acting Judge Warwick Andrew said during sentencing.

"In my view, these are both heinous crimes that showed contemptuous and callous disregard for the lives of two innocent fellow human beings."

Reid

The second case concerns a 37- year-old Brisbane gay man, Mark Kenneth Reid. The Court heard that Reid met his partner, who cannot be named, at a Brisbane hotel in 2003, after which they started a relationship which continued for two months.

The men did not practice safe sex after Reid, who had been diagnosed with HIV in 1987, repeatedly reassured his

partner that he was HIV-negative. In a police interview, Reid denied that he had lied about his HIV status and said the pair's decision to have unprotected sex was mutual, often made after excessive drinking.

The relationship ended after Reid's partner tested positive for HIV and suspected Reid as the source. In the first case of its kind in Queensland, Reid was charged with 'committing a malicious act with intent', an offence which carries a maximum jail term of 14 years.

The prosecutor told the Brisbane District Court that Reid was "self-absorbed" and suggested that he had deliberately infected his partner as a way to secure their relationship. The partner told the Court that, had he known that Reid was HIV-positive, he would not have had sex with him with or without a condom.

"So gross was his behaviour that the only possible inference [was] that he intended to give HIV to [him]," he said. Judge David Robin said a victim impact statement showed the partner had lost the will to live and no longer had any prospects of career advancement. He sentenced Reid to 10 years and six months' jail. Under Queensland law he will serve a minimum of 80 percent of his sentence.

What does this mean for people with HIV?

Plainly, these two decisions will cause concern among people living with HIV/AIDS as they reinforce the potential negative consequences of falling foul of the law. But it is important to stress that both Kanengele-Yondjo's and Reid's convictions, and the severity of their sentences, reflect the apparently deceitful way they conducted themselves, actively concealing their HIV infection while practicing unprotected sex.

"A person who harms another person by deceiving them about whether they have a disease commits a crime and can expect to go to jail for a long time," wrote barrister David Buchanan in an opinion piece about the Kanengele-Yondjo case in the *Sydney Star Observer*.

"Does the decision mean you can go to jail for failing to disclose your HIV status? Yes, if you know you have HIV and you have unprotected sex and your partner does not consent to the risk of infection and contracts HIV. No, if you take precautions to avoid the risk of transmission whether your partner knows you have HIV or not. Probably no, if your partner consents to the risk of transmission," Buchanan explained.

For the vast majority of positive people, who are honest about their HIV status and/or always practice safe sex, these cases provide a reminder of the need to be aware of the law but should be of little further concern.

The laws relating to transmission of HIV vary from state to state, and *Positive Living* will provide an in-depth look at these in a coming issue. One thing that is universal, and perhaps unfortunate, is that these laws place the greatest onus for preventing transmission on positive people, and in combination with the stigma that HIV still carries, this can be a considerable burden.

One only needs to re-read Reid's partner's statement to the court – that if he had known Reid had HIV, he would not have had sex with him with or without a condom – to be reminded of that.

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