

STATE OF TASMANIA v DJB
COMMENTS ON PASSING SENTENCE

12 MARCH 2020
PEARCE J

DJB, you were found guilty by a jury of indecent assault. You were acquitted of the more serious charge of rape. It is for me to determine the factual basis on which you are to be sentenced. For the most part the facts follow from the verdict, and it is my duty to sentence you in accordance with the verdict.

On 5 August 2017 you were staying with a friend who lived in the downstairs unit in his parents' home in Launceston. You had been friends with the family for many years. You had been there for about two weeks after having broken up with your partner. You were sleeping on a mattress on the floor. That day was a Sunday and was rainy. Your friend's four year old daughter was visiting her father and grandparents. She lived with her mother at a different home, but was a frequent visitor. Six or seven of her cousins, children of various ages, were also visiting. You spent most, if not all, of that day in the unit downstairs and other adults and children were mostly upstairs. However during the course of the day the complainant came into the unit where you were. She knew you. You had spent time with her before, perhaps even on that day. The jury was satisfied beyond reasonable doubt that, while you were with her in the unit, you indecently assaulted her by touching her on or near her vagina. The jury must have been substantially satisfied of the truth of her account that on the mattress in that room, after her pants were taken down, you indecently touched her with your finger. That night, after she got home, she told her mother what had occurred. According to the evidence of her mother, the complainant gave a demonstration of you licking your finger, her drawing her knees up, and being touched on her vagina. Her evidence was that the touching was to her skin, and thus could only have been after her pants had been lowered or removed. I find that she was wearing tights on that day which must, with her underpants, have been removed or lowered either by you or by her at your request. The complainant, some months later, gave a very similar description to a police officer. Despite her age, her complaint of the touching has remained substantially consistent and the jury must have been satisfied beyond reasonable doubt of the truth of it. The jury rejected your denial of indecent touching, although was not satisfied beyond reasonable doubt that, despite the evidence of you having licked your finger, there was penetration of either the complainant's vagina or her external genitalia.

You are now aged 50. You were aged 48 when the crime was committed. You had a traumatic childhood as a result of abuse to which subjected by your father and while you were in residential care. After leaving school in year 10 you led an industrious life in employment of an agricultural or rural nature, but prior to this crime you were in receipt of a disability pension for physical injuries. You suffer from some mental health conditions but it was not suggested, nor is there any evidence, that the conditions reduce your culpability or are otherwise relevant to sentence. You have no record for having committed offences of a sexual nature against children or otherwise. You were sentenced on four occasions between 2015 and 2017 for family violence offences including common assault and breaching family violence orders, leading to your imprisonment for a total of three months from 21 August 2017, just after this crime was committed. I infer that it was those offences which caused your living circumstances when this crime was committed. The crime was committed while you were on bail and subject to probation, albeit for offending of a different nature.

Any sexual offence against a child is a serious matter. I accept that this was a single, isolated incident, relatively brief and opportunistic. There was some delay before you were charged but it is not significant. There was delay after you were charged before the charge was

ultimately resolved which arose through no fault of yours, but it has not resulted in any particular unfairness and I do not regard the delay as being a sentencing factor of much weight. Your crime is made more serious by the fact that the complainant was so young, and because you breached the trust that she, her parents, and her extended family placed in you. Without that trust you would not have had the opportunity to offend. I am satisfied of the truth of the complainant's evidence that you asked her to keep it a secret. Even single instances of offences of this nature are presumed to cause harm to children. There was no physical harm but the most significant impact is almost always the psychological effects. The long term consequences are impossible to predict. A victim impact statement from the complainant's mother describes a range of effects on the complainant which have already manifested themselves. I do not need to refer to them all but they include nightmares, feelings of insecurity, distrust and lack of safety. Her relationship with her father was affected because the assault occurred in his home, where she was entitled to feel safe. There has been no sign of remorse. You are not entitled to the mitigation a plea of guilty would have attracted. That is so especially in cases like this because the complainant and her brother were both required to attend court and be cross examined. Thus, at age six, she had to relive and recount what happened to her two years earlier, adding to the trauma to which she was exposed and the impact of the crime.

DJB, you are convicted. Given the nature and circumstances of this crime, I am not satisfied that you do not pose a risk of committing a reportable offence within the meaning of that term in the *Community Protection (Offender Reporting) Act* 2005 in the future. I make an order directing that the Registrar cause your name to be placed on the Register and that you comply with the reporting obligations under the Act for a period of three years from your release. You are sentenced to imprisonment for one year and three months from 28 February 2020, the date you went into custody. I order that you not be eligible for parole until having served half of that sentence.