

STATE OF TASMANIA v SAXON JOHN HORTON
COMMENTS ON PASSING SENTENCE

2 JUNE 2020
BRETT J

Mr Horton, you have pleaded guilty to one count of indecent assault and one count of penetrative sexual abuse of a child.

These crimes were committed by you in the early hours of 20 January 2019. You were 20 years of age then and the female complainant was 13 years old. You met that night, after agreeing to do so during a social media conversation. Soon after meeting, you committed the indecent assault by massaging the complainant's breasts with your hands and penetrating her vagina with your fingers. You also used your tongue on the area of her genitalia. You asked her to suck your penis which she did. You then had vaginal sexual intercourse with her, which persisted for around 10 minutes. You removed your penis from her when she asked you to. I was not told that you experienced ejaculation, but a subsequent forensic medical examination located your semen in her high vagina. You did not use a condom.

It is accepted by the prosecution that the sexual activity was consensual. However, this has little bearing on your moral culpability or the objective seriousness of the crimes. It is clear from your response to police when initially questioned about this matter that you were well aware of the complainant's young age and that it was unlawful to engage in this conduct with her. The law which makes such conduct criminal, exists for the protection of children and young people and, in particular, recognises that children will require protection from adults who would take advantage of them, and from the consequences of their own poor and immature choices. The complainant was not old enough to make a reasoned and informed decision about whether she engaged in this sexual conduct with you. In actual fact, it is clear that almost immediately after, she regretted her decision. She expressed this regret to a friend, which led to the matter coming to the attention of the police. She was required to undergo a medical examination and, understandably, found this to be an intrusive, confronting and difficult experience. Her impact statement describes very serious ongoing psychological consequences. Your counsel has argued that I should exercise caution in assessing the impact because of the existence of other pre-existing factors, which are conceded by the complainant. While I will exercise the required circumspection in assessing specific impact, there are two important points I need to make. Firstly, the existence of pre-existing conditions or difficulties does not reduce an assessment of impact of conduct such as this and, indeed, can explain why this conduct may have had particular consequences. A person suffering from pre-existing conditions is as entitled as anyone else to the protection of the law, and entitled to have the exacerbation of those difficulties caused by the criminal conduct assessed in a realistic way. Secondly, it is well within the experience of the Court and, thankfully now better understood than in the past, that sexual abuse against young people, particularly those at a vulnerable and formative stage of life, as this complainant was, is likely to have very significant and long lasting, if not permanent, consequences. As difficult as the complainant has found the impact of this experience to be, the sad reality is that it is reasonable to expect that the relevant consequences may not yet have fully manifested. The impact described by the complainant in her statement is, in my view, entirely consistent with what would reasonably be expected as a consequence of criminal conduct such as this.

However, it is, of course, also important to have regard to your age and general background. At the time you committed these crimes, you had only recently turned 20. You have no relevant prior convictions. From what your counsel has told me about you, you seem to be a young man who, in all respects other than your commission of these crimes, is law-abiding, hard-working, reliable and well regarded by those who know you, including your employer. It is reasonable to infer that, despite having reached adulthood, you are still developing emotionally and may not yet have reached full maturity. There is nothing to indicate that your conduct on this occasion was other than an isolated act, which is not reflective of your normal character. Consistent with this, your counsel asserts that you are remorseful. Although I do not regard your plea as early, I do accept that it was entered soon after you had engaged your current lawyer, and does constitute some evidence of remorse. At the very least, it has avoided the need for the complainant to give evidence at a trial.

Crimes of this nature constitute extremely serious criminal conduct and it is important that the sentence emphasises general deterrence. I do intend, therefore, to impose a sentence of imprisonment. However, in order to reflect your young age, the relatively limited disparity in age between the complainant and you, your otherwise good character and the plea of guilty, I will offer you an opportunity to avoid serving the sentence by wholly suspending it. Of course, you must understand that if you commit any offence punishable by imprisonment, whether of a similar nature or not, you will be required to serve the sentence unless the court dealing with the new offence forms the opinion that this outcome would be unjust.

Accordingly, you are convicted of the crimes to which you have pleaded guilty. I impose a global sentence of nine months' imprisonment, the whole of which is suspended for a period of 18 months from today. The condition of suspension is that you are not to commit another offence punishable by imprisonment during that period.

I am required to make an order under the *Community Protection (Offender Reporting) Act* 2005, unless I am satisfied that you do not pose a risk of committing a reportable offence in the future. Although I think that the risk is relatively low, it is impossible for me, in the circumstances of this case, to say that there is no risk. Accordingly, I must make an order. These are both class 2 offences. It follows that the maximum period for which an order can be made is for the rest of your life. However, I think the appropriate response to the perceived risk, is to select a period consistent with the duration of your ongoing development, as best as I can judge it. I order that your name be placed on the register pursuant to that Act, and that you comply with the reporting obligations under that Act for a period of three years.