

COMMENTS ON PASSING SENTENCE

25 JUNE 2018

The defendant has been found guilty by a jury of one count of indecent assault. He was aged 42 years at the time he committed the crime. The complainant was aged 14 years. The complainant was visiting her mother who was married to the defendant and was living in his home. On the afternoon in question in 1996 the complainant had been drinking beer I find and I am satisfied beyond reasonable doubt as to that given the cross-examination of her and the answers she finally gave as to that which I find also had been supplied to her by the defendant. The defendant was an alcoholic given at the time to drinking by going on benders. At about 3.30pm in the afternoon on the day concerned, the complainant was sitting in the lounge area when the defendant awoke from his chair where he was also sleeping with the perception that he had been touched sexually by the complainant. The complainant was wearing a one piece swimming costume. The defendant accepts that he placed his hand briefly over the complainant's groin area.

I am satisfied on the balance of probabilities that was the assault that the jury found established beyond reasonable doubt and what led to their verdict of guilty of indecent assault but not guilty to aggravated sexual assault. The defendant has always been prepared to plead guilty to the crime of indecent assault involving the touching of the complainant to the groin area with an open hand over her bathers.

The defendant is now aged 63. He has previously been of good character and his only transgressions have been traffic related, some involving alcohol making them more serious. This is not a bad example of the crime of indecent assault, it was spontaneous and short-lived. I take into account the defendant's age and previous relatively good character. The offence has however had consequences for the victim and given the age difference between the two and the fact that the complainant was his step-daughter and was staying in his home to visit her mother who was then a recovering alcoholic, it was a breach of trust.

It was also significant enough for the event to stay with the defendant from the time it happened until the time he gave his record of interview to police and told them just that. The defendant is convicted of the crime of indecent assault and is sentenced to 3 months imprisonment which sentence I wholly suspend on condition the defendant commit no offence punishable by imprisonment for a period of 18 months. I suspend the sentence in that way on the basis that it is, based on the jury's finding, out of character and brief and spontaneous. I am also satisfied that due to the considerable lapse of time since the offending I need not make an order under the *Community Protection (Offender Reporting) Act*.