

STATE OF TASMANIA v B G C
COMMENTS ON PASSING SENTENCE

WOOD J
21 AUGUST 2019

The defendant has pleaded guilty to two counts of maintaining a sexual relationship with a young person and two counts of indecent assault. The charges concern three children aged between 10 to 12 years. Each of the children were regular visitors to the defendant's household, visiting or staying overnight. The defendant took the children on outings to the beach, fishing, kayaking and on overnight trips with his own children.

The first count of maintaining a sexual relationship with a child relates to a child whom I will refer to as B. On five occasions between 1 July 2017 and 31 March 2018 the defendant indecently assaulted him. B was aged between 10 and 11 years. The other charge of maintaining a sexual relationship with a child relates to a child J. It also involves five occasions of indecent assault, committed between 1 January 2018 and 31 March 2018, when J was 11 years of age. The two counts of indecent assault concern the child T, and occurred during January and March 2018 when T was 12.

Some of the indecent assaults happened after outings when the children and the defendant returned to the defendant's home or other accommodation and the child would shower or bathe. On the first occasion, when B was 10, he and the defendant went to a cottage on the defendant's property and B had a shower. The defendant told him to take his pants off in the shower and the child said he did not want to, and the defendant told him to do so, so the sand would get out. B did so and the defendant took the soap from B and washed and rubbed his penis and testicles. B felt uncomfortable as the defendant's face was close to his genitals. The defendant showered in front of B, telling him to sit in the bath. B covered himself in bubbles and avoided looking at the defendant showering. The defendant dried B afterwards.

The second incident happened in January 2018 when B was 11 years of age. The defendant took a group of children away to stay the night. After returning from the beach, the defendant showered with B and rubbed his penis and testicles with soap. Afterwards, the defendant told B to lie on the bed, and the defendant laid down next to him naked, and rubbed cream on his penis and testicles and his stomach. The pretext for using the cream was a rash the child had from using a boogie board.

On the same trip the defendant asked J, after he had showered, whether he had a rash and rubbed cream onto and above J's penis.

On the same trip the defendant indecently assaulted T. T was having a shower with another child when the defendant parted the shower curtain and washed his penis, and testicles in a scrubbing action. T observed the other child assaulted in the same way.

A week later, the defendant assaulted the children J and T in the same incident. They had been on a trip to the beach. J was in the bath with T when the defendant got into the bath with them and washed J's penis, testicles and bottom with his hands, inspecting him to see if he had any rashes. He also washed T in the same way, pulling back his foreskin as he washed him. T observed the defendant washing J and felt really uncomfortable about that. Afterwards the defendant dried both boys and put cream on J.

In March 2018, the defendant again washed B and J after they had been to the beach. Again, he got into the bath with them. He washed them in the same way as before. He dried each of them and applied cream to B's penis and testicles and rubbed it in.

On that day or the following day, the defendant drove a group of children including three girls, his daughter who was 12, and two of her friends, and B and J. He allowed each boy to drive the car. In the case of B, the defendant touched his penis and testicles over his shorts. He sat J on his lap, held him around the waist and held his penis and testicles.

Later that same day, he drove the children to go fishing and on the return journey, the boys sat on the defendant's lap and steered the car. As B was driving, the defendant rubbed B's penis over his shorts for the entire time B drove, which was approximately half an hour. Subsequently, he did the same thing to J, touching his penis again over his clothing while he drove. B observed this. The boys, during these occasions, were not wearing a seatbelt.

The two boys J and B distanced themselves from the defendant. The defendant contacted T through Facebook Messenger. During the exchange he said, "If I ever did anything wrong or made them uncomfortable same with u then they should just say so". This comment sought to normalise the conduct and was manipulative. In April 2018, a parent of one of the complainants became aware that the defendant had bathed with his son, and one of the other boys, and reported it to police. The defendant was interviewed on 6 April 2018 and denied the allegations. When it was put to him that the children had provided detailed accounts and corroborated each other, he claimed they were making up stories and that they were "pretty naughty".

The defendant has committed 12 offences of indecent assault involving three children within a period of approximately nine months. Four of the twelve offences occurred on a single date and four other offences occurred on two dates. I note that the offending did not escalate over the period of offending. It can be seen that the children gave the defendant clear messages that they did not want these assaults to occur and the defendant chose to ignore them. An aggravating factor of the two indecent assaults involving T, and one of the occasions for both of the maintaining charges is that they occurred in the presence of another child. In relation to each of the two counts of maintaining a sexual relationship with a child, on two of the occasions, he placed the child on his lap while driving on an open road. It is an aggravating factor that in carrying out the abuse on these occasions, he placed the child in a situation of risk.

Further aggravating factors are the ages of the children, all victims were under 13 years of age, and the serious breach of trust involved. The defendant was trusted by the parents and he abused that trust in a flagrant fashion. The defendant would have understood that as a parent, he was regarded by other parents as trustworthy and as someone who could be relied on to care for and protect the complainants from harm.

After the first occasion of indecent assault, he continued to accept the responsibility of having the children visit and stay, and he did so with knowledge that he was a danger to them. His moral culpability is high.

The defendant's conduct has had a disturbing effect on all three children. B in particular has been affected. He describes feeling scared when he leaves his house and not enjoying outside activities any more. He is angry and his family has noticed he has changed. There is the real prospect of long term emotional or psychological harm in the case of all three children.

The defendant is a 40 year old man who, until his recent incarceration, lived with his wife and three children. He has one relevant conviction involving possess child abuse product committed in 2003. He received a sentence of three months' imprisonment, wholly suspended. He has a close and supportive relationship with his wife, and they operate a cleaning business together.

I have a report from psychologist Mr Damien Thomas dated 23 July 2019. The report notes that the defendant was the victim of persistent sexual abuse as a child when aged 5-11. He engaged in psychological therapy as a young man but he has difficulties that remain untreated. In Mr Thomas's opinion he meets the criteria for Paedophilic Disorder (non-exclusive) type. He is assessed as low risk of future sexual violence. It is noted that he has poor insight into his offending. It is Mr Thomas's opinion that this relates to his enduring experience of disassociation as a coping mechanism for his past trauma of abuse. It is recommended that he engage in a long-term psychological treatment program.

The defendant's family will experience hardship as a result of his gaol sentence. The family business has been adversely affected by his offending, and the family income is affected. The defendant's wife has epilepsy and experiences regular seizures. She cannot drive. Her condition impacts on her day-to-day living with a need for supervision by an adult. She needs help in looking after her three children and supervising their activities. She is heavily reliant on the defendant. The defendant's mother lives on the family property and the defendant assists her with some of her daily tasks. The defendant's children, particularly his eldest daughter who 13, is likely to be burdened by the extra responsibility and anxiety and worry because of her mother's condition. The defendant's children have endured repercussions in their school environment due to their father's offending. The defendant's wife has also experienced reprisals.

I accept that the defendant is genuinely remorseful, and that he understands the gravity of his conduct. He has pleaded guilty which has spared the complainants the stress of having to give evidence of the abuse in court.

Even though his plea of guilty was at a late stage of the court proceedings, it still warrants a significant reduction in his sentence, noting the benefit to the victims and the community. In the circumstances of this case, I have determined to allow a deduction in the order of 20%.

Having allowed that deduction for his pleas of guilty, if the defendant was being sentenced today for his crimes individually, I would impose 2 years and 7 months for each of the counts of maintaining a sexual relationship with a child, and 14 months as a global sentence for the two indecent assaults.

In fixing the aggregate sentence, it is reduced to some extent because of his personal circumstances and the impact of the sentence on his family. It is noted that these consequences upon his family will in turn impact upon the severity of the sentence for the defendant. The aggregate sentence is moderated so that it is proportionate to his overall criminality.

Notwithstanding these considerations, a heavy sentence is still required to reflect the number of indecent assaults, the nature of his conduct, the number of victims, and the harm caused to each of them.

B G C, I record convictions and I impose a global sentence of 4 years and 6 months' imprisonment.

I allow the minimum non-parole period of one half of the sentence. You are not to be eligible to apply for parole until you have served the minimum of one half of the sentence. The sentence I impose today is backdated to 24 July 2019.

Pursuant to the *Community Protection (Offender Reporting) Act 2005*, I order that your name be placed on the Register under that Act for a period of seven years from your release from prison.