

TASMANIA v H
COMMENTS ON PASSING SENTENCE

4 DECEMBER 2008
PORTER J

Mr H, a jury has found you guilty of two counts of indecent assault as an alternative to one count of maintaining a sexual relationship with a young person. I asked the jury to identify the occasions and was told that it was the first and last of the particularly identifiable occasions, the last of those occasions being the very last time this conduct was said to have occurred. The two occasions were in about July 1980 and some four years later in about mid-1984. You are to be sentenced on that basis.

The complainant on the first occasion was 7 years old and, accordingly, it follows that he was about 11 on the second. The conduct on each occasion was the same and involved you having the complainant on your lap watching television, putting your hand down his pyjamas onto his penis and testicles and rubbing and squeezing for a few moments. This caused him discomfort to the extent of some level of pain. You had been befriended by the complainant's mother and had assumed a babysitting role whilst she went out of an evening. This puts this case in the category of a breach of trust. This has obviously had some impact on the complainant, although he seems to be rather robustly dealing with his issues.

You are now 47 years old, making you 18 and 22 at the relevant times of these offences. You are married and now have three sons aged 17, 15 and 12, and are working in a very responsible position in relation to military aircraft in Townsville, Queensland. You had a very isolated, oppressive and capricious upbringing, your family being part of a religious sect. This happened until you were expelled in your late teens. You met up with the complainant's family through working for a relative of theirs. Obviously your prior isolation had played a role in your close involvement with the family. You later married, as I have said, and had a successful electrical contracting business until moving to Queensland.

These incidents, which are now 28 and 24 years respectively in the past, require close consideration. This is so because on 22 December 1983 you were convicted of five counts of indecent assault involving your niece and were sentenced to nine months' imprisonment, the execution of which was wholly suspended on condition you were of good behaviour for a period of 18 months. The last of these present incidents post-dates that conviction, but the first one pre-dates the entirety of that behaviour. All of these incidents would seem to form part of a course of conduct pursued at that time which can be perhaps explained in part, at least, on the basis that it was immature, exploratory and experimental behaviour arising from your upbringing in the sect. However, the age at which you committed the last offence should not be overlooked.

I take into account your age and your personal circumstances at the time and the fact that you have no convictions for any significant matter for the last 24 years. There remains a need though to mark society's strong condemnation and abhorrence of this type of behaviour and to recognise that you re-offended shortly after having been convicted of similar misconduct, albeit a long time ago. It must be recognised that depending on the circumstances, imprisonment is still appropriate, notwithstanding the antiquity of these types of offences. However, in my view in this case a suspended term of imprisonment, coupled with a relatively substantial fine is an appropriate sentence in all of the circumstances.

You are convicted of two counts of indecent assault. You are sentenced to three months' imprisonment, the execution of which will be wholly suspended on condition you are of good

behaviour for a period of two years and you will be fined the sum of \$2,000. I do not think you are a risk in the sense relevant to the *Community Protection (Offender Reporting) Act*, having regard to the effluxion of time since this conduct and the conduct for which you were previously convicted and any presently suggested similar misconduct, and accordingly I make no order.

You will also pay the victims of crime compensation levy of \$100.