

STATE OF TASMANIA v A H J H
COMMENTS ON PASSING SENTENCE

15 SEPTEMBER 2020
ESTCOURT J

The defendant A H J H, aged 51, has been found guilty by a unanimous verdict of a jury of one count of persistent sexual abuse of a child.

I am satisfied beyond reasonable doubt that between 2003 and 2008 the defendant committed each of the four unlawful sexual acts specified by the Crown, upon the complainant, his stepdaughter – each was an indecent assault, namely:

On the first occasion, in 2003 – touching the complainant on both breasts over her pink and white pyjamas with both hands, grabbing them and slightly squeezing them.

The second occasion in 2003 – after an athletics carnival, touching the complainant on the breasts on the outside and inside of her top while tucking her in after she had been reading and watching Barbie movies.

A third occasion, following the second occasion – touching the complainant on the genital area under her boxer shorts but over her underpants, after she had gone to bed on an occasion when she had been drawing an elephant.

The fourth occasion, in or around 2008 – touching the complainant on the breasts on the way home from a friend's house, when she was in the front passenger seat and he reached across the car from the driver's seat.

These are, as has been pointed out by Mr Stevens, each individually indecent assaults. However I am also satisfied that these indecent assaults occurred in the context of many more similar assaults over a five year period when the complainant was between seven and eleven or twelve years old.

For the crime of persistent sexual abuse of a child, it is not necessary that the Crown prove the dates on which any of the unlawful sexual acts were committed, or the exact circumstances in which any of the unlawful sexual acts were committed.

Children who are victims of such offences are frequently unable to give particulars of each and every sexual act during a period of prolonged offending. The State has listed the specific sexual acts it is able to identify, but the defendant may be sentenced on the basis that each specific act is part of a course of conduct involving other, sometimes many other, unspecified acts.

As one of my fellow judges said recently, the crime, as it was then, of maintaining a sexual relationship with a young person, by its nature, applies to a wide range of sexual offences, and consequently there is no discernible sentencing range. The defendant, however, should suffer the same penalty as would have been imposed if the individual sexual acts constituting the crime had been charged as separate crimes, such that the sentence is a just and appropriate measure of the defendant's total criminality.

In this case, the individual acts amount to serious crimes, given the complaint's young age at the time that they commenced, and the defendant's serious breaches of trust and abuse of power, and given that they formed part of a sustained course of sexual abuse which occurred over about five years.

There are factors which are often present in cases such as this that were not present in this case and which had they been, would have made the defendant's unlawful sexual acts more serious and warranted a longer sentence. There were no penetrative acts, no exposure to the defendant's penis, no forced contact between the complainant's hands and the defendant's penis, and no assisted masturbation. Nor did the defendant resort to violence or intimidation to overcome resistance.

I mention these matters, not as mitigating factors, but only as absent aggravating factors, in order to distinguish the sentence in this case from others of its type. There are no truly mitigating features. I take into account that the defendant has health problems, and that there have been delays in this matter coming to trial, which of course caused stress and anxiety. The defendant has shown no remorse and has been prepared to put the complainant through the ordeal of giving evidence. He is not of course to be punished for maintaining his plea of guilty. He has no relevant prior convictions.

Child sexual offences have enormous potential to cause physical and psychological harm. Conduct of this nature has profound and deleterious physical and psychological effects upon victims for many years, if not for the whole of their lives. The consequences of an offence, including its effect on a victim, are important considerations in the sentencing process, and the severity of the sentence may be increased because of them.

In this case, the complainant has made a victim impact statement. Her mental health, her physical health, and her personal relationships have suffered dramatically because of the defendant's offending, and the preparation for and the court case itself has had an impact upon her.

The defendant is convicted of the crime of persistent sexual abuse of a child. I am not satisfied that he poses no risk of re-offending. I order under the *Community Protection (Offender Reporting) Act 2005* that his name be placed on the register, and that he comply with the obligations under that Act for a period of five years from his release.

The defendant is sentenced to imprisonment for a period of four years. I order that he is not to be eligible for parole until he has served two years of that sentence.