

Mr Denehey, you have pleaded guilty to an indictment alleging possession of child exploitation material. I am also sentencing you on a complaint alleging possession of a bestiality product. You have pleaded guilty to that matter and I am dealing with it pursuant to s 385A of the *Criminal Code*.

On 13 June 2019, police attended at the residence where you were living. This followed an investigation into the use of child exploitation material which had identified that an IP address registered to that residential address had been used to access child exploitation material extensively during 2019.

The search resulted in the seizure of electronic devices: a mobile phone, a laptop computer and a desktop computer. The mobile phone was in your possession, but the computers were located in the living areas of the house: the lounge room and kitchen/dining area.

An examination of each of these devices was completed and the material was classified according to the Australian National Victim Image Library scheme, which categorises images according to their content. This categorisation scheme provides an objective standard against which images can be classified according to that content. This standardises the process of categorisation in a way which ensures some degree of consistency in the assessment and determination of the objective seriousness of the offending.

The mobile phone contained 13,159 images and 335 videos. 1,427 of those images and one video were categorised as child exploitation material.

The child exploitation material on the phone falls into the ANVIL categories as follows:

- In category 1– Which depicts nudity, sexually suggestive posing with an emphasis on genital areas but no sexual activity: there were 1249 images, including 227 duplicates.
- In category 2 – Which includes solo masturbation by a child or sexual acts between children in which no penetration occurs, there were 50 images including 9 duplicates.
- In category 3 – Which includes non-penetrative sexual activity between adults and children, and may include mutual masturbation, there were 39 images, including 6 duplicates.
- In category 4 – Which includes penetrative sexual activity between children or adults and children, there were 83 images including 16 duplicates.
- In category 5 – Which includes sadism, bestiality, humiliation, torture or child abuse, there were 6 images including 2 duplicates.

A further 545 images, 78 of which were duplicates, were Category 7 images which were not illegal but were indicative of child exploitation material and all formed part of a series of child exploitation materials.

There was an additional 97 images and 17 videos found to depict bestiality on the phone. On the laptop, 5,127 videos were located, 10 of which depicted bestiality. The desktop computer contained 2,203 videos, 75 of which were found to depict bestiality.

In all across the three devices, a total of 97 unique images and 102 unique videos depicting bestiality were located. These all fall into category 5 in the ANVIL categorisation

None of these devices was protected with a PIN code or a password, and each was accessible by other members of the household, meaning the material was accessible to the children living there all of whom were under 10 years of age.

It is not suggested that any child in fact accessed that material. It is suggested that you were indifferent to that risk, and I accept that submission.

You were arrested and participated in a video record of interview.

You acknowledged ownership of the mobile phone and the computers, and you told police that you normally obtained pornographic material from a website called "Tumblr". You claimed that the images and videos were "all above board".

You indicated that you manually saved each image or video of interest, and agreed that you had viewed each of the 1,427 images depicting child exploitation material located on your phone and had intentionally saved all of it. You agreed that you downloaded that material for the purposes of masturbation. You said you no longer use that material. All the material was saved into files labelled "Tumblr" and "Tumblr new".

You were aware, you told police, that such material was illegal and you accepted in that interview, that you would probably go to gaol if found in possession of it. You claimed not to like child exploitation material but in respect of the bestiality material, said that you did not think it was that bad.

You agreed that the children and your then partner had used the computers on occasion to watch TV shows.

I have received two reports about you. I won't set out the contents of those reports in their entirety but I have regard to all of the material within them, along with the helpful submissions which have been made by Ms Graves on your behalf.

You grew up in foster care, your father never having been known to you, and your mother passing away when you were just 18 months of age.

You are currently a single man. You have two children to earlier relationships but you do not have contact with either child.

You had two children with your ex-partner, one of whom was stillborn and the other dying soon after birth.

You are described as generally enjoying your own company, though you maintain contact with one of your brothers.

Though you are in good physical health, you have reported mental health issues in the past. You have previously been diagnosed with ADHD, and a chronic major depressive disorder and a generalised anxiety disorder. You are currently medicated for this.

Until you were charged with this offending, you were using cocaine. You were not taking medication for your mental health issues during that time. You have recommenced taking that medication, and ceased using illicit substances since.

A report from Damian Minehan, a forensic psychologist, suggests a tendency to minimise your offending and describes you as unwilling to discuss your motivation for engaging in this behaviour, or the specific sexual deviance driving that behaviour. This made it difficult for him to assess your motivation for accessing the material. It is however his opinion that your seeking out and saving of child exploitation material and material containing acts of bestiality suggests paraphilic interests.

It is opined that you are likely to have an interest in female children, although the age range is unclear. It is considered likely that you have deviant pattern of sexual arousal that relates to female children, as well as bestiality. He considers it likely that there are, intimacy deficits leading to significant issues for you in relationships and cognitive distortions relating to your offending behaviour.

He did not assess you as suffering from a psychotic mood or anxiety disorder. It is not considered that you meet the threshold for a formal diagnosis of a personality disorder.

In relation to the application of the Verdins principles, his opinion is that they are not engaged. I accept that opinion.

It is considered by Mr Minehan that you represent an ongoing risk of similar offending without intervention or rehabilitation, and it is recommended that you make arrangements to engage in and participate in a sex offender treatment program.

In sentencing you I have regard to the principles articulated by Porter J in *Director of Public Prosecutions v Latham* [2009] TASSC 101 and referred to in *Taylor v The Queen* [2015] TASCCA 7.

Dealing with each of those matters, the first matter is the degree of obvious physical harm or fear or distress in the victims. The images located on your mobile phone depict females between the ages of 4 and 16 engaged in sexual acts, and four images depicting females aged between 4 years and 8 years, engaged in oral, vaginal and anal sex with adult males. There was one Category 3 image depicting a prepubescent female in visible distress.

Children have suffered in the production of these images, and your conduct contributes to a demand for them, and that demand perpetuates the abuse of children.

I take into account that you had no contact with any of the children in the images.

The second matter of relevance is the number of images. A large number of images were located on your phone (1,427 images and one video). I acknowledge that the number located is much less than is frequently encountered by courts sentencing for this type of offending.

The next consideration is whether possession was for the purpose of distribution. That is not alleged in this case. Your criminal conduct did not involve the use of chat rooms either.

The next relevant matter, is the level of personal interest in the material. One example of such interest is the way in which any collection is organised. The State submits, and I accept, that your level of interest in this material is high as evidenced by the number of images located, and the fact that each image was manually saved by you.

I take account of the fact that you did not create any of the material, or pay for it.

The final matter, which is identified as relevant, is whether the possession involves a risk of accidental discovery by innocent computer users. As I have noted, there was such a risk in this case.

In sentencing you the Court must punish you for your behaviour and deter you from accessing and using this material in future. I note that Mr Minehan's opinion is that if you obtain treatment, there are prospects for your rehabilitation.

General deterrence is important because the effect of behaviour such as yours is that it creates a market for the production of such images, with obvious harm to those depicted. Deterrence is intended to stop behaviour like yours in order to protect the children.

In the circumstances I have determined that a term of imprisonment is the appropriate penalty.

I take into account your plea of guilty. I am told that you are ashamed of your conduct.

I note that you have no prior convictions for this type of offending

Mr Denehey, I convict you on the indictment and I sentence you to 12 months' imprisonment.

I turn to consider whether I should suspend all or part of that sentence. I have acknowledged already your prospects for rehabilitation if you obtain treatment. I consider that those prospects will be enhanced by at least a partial suspension of sentence. But I also consider that in order to achieve an appropriate punitive effect, and general deterrence you should be required to serve some of that sentence.

I order that 7 months of that sentence be suspended on condition that you commit no offence punishable by imprisonment for a period of three years.

On the complaint I convict you and sentence you to 3 months' imprisonment to be served concurrently with the sentence I have just imposed. I will suspend its operation on the same condition.

I also make a community-based corrections order for a period of 12 months to commence on your release. I impose the core conditions, and as well I impose the following special conditions:

- (a) that you submit to the directions of a probation officer with respect to engagement with medical practitioners, including psychologists and psychiatrists.

This is a reportable offence under the *Community Protection (Offender Reporting) Act 2005*.

The maximum length of the reporting is 8 years.

I have regard to the matters identified in s 10 of that Act in particular under subsections (c), (e) and (g). This includes the report from Mr Minehan and the opinions expressed therein. I am not satisfied that I ought not make an order under the Act. I make an order that the Registrar place your name on the register and that you comply with the reporting obligations under that Act for a period of 4 years following your release from prison.

The effect of that sentence Mr Denehey is that you will serve 5 months of the sentence of imprisonment that I have imposed today. On your release you will have a 7 month sentence and another 3 month sentence each of which will be suspended for 3 years. If you commit an offence punishable by imprisonment during that period you are liable to serve those terms. There is a requirement as well that you engage with community corrections and you have ongoing obligations under the community protection order that I have just made.

Finally I make the forfeiture orders sought by the State for the mobile phone, the laptop and the desktop computer.