

The defendant pleads guilty to persistent sexual abuse of a young person. The crime was committed in the period of about two years between the beginning of 2017 and the end of November 2018. The victim is his younger sister. At the time she was aged between 13 and 15. He was aged between 15 and 17. The unlawful sexual acts consist of sexual assaults. In general terms, the complainant indicates that there were about 10 occasions of sexual contact. She recalls four specific occasions. On the first occasions she was 13. She was in his bedroom playing on an electronic game. He touched her breasts under her clothing. The second occasion occurred about two months later. She was asleep in her bed when he came into the room and got into her bed. He removed her pyjama trousers and underwear, and his own trousers, placed his penis against her vagina and rubbed against her. It continued for half an hour but he did not ejaculate. The next identified occasion occurred on 6 October 2018. He entered her bedroom early in the morning after their parents had left the house. She was in bed. He removed her clothing and touched her breasts and vagina. He exposed his penis and rubbed it against her vagina for about 15 minutes. He did not ejaculate. The final identified occasion occurred the following month. The complainant had just turned 15. She was sitting on her bed listening to music. Their parents were out and their sister was outside. He undid her pants, touched her bottom, and touched her chest under her top. He stopped when the sister returned inside.

The defendant's conduct was discovered when the complainant told a school friend what had been going on. The defendant was spoken to by the police and he admitted at least some of the sexual conduct towards his sister.

The tragedy of all this is that for years leading up to, and for at least most of the period covered by the indictment, both children, along with their siblings and others, were the subject of shocking sexual abuse at the hands of a much older male, a trusted family friend. The acts committed by this man against the defendant commenced in 2012 and continued until just before his 17<sup>th</sup> birthday in 2018 and included numerous penetrative acts. The acts committed against his younger sister, the complainant in this case, included repeated rapes. The terrible harm that this must have done to both children can only be imagined, and the conclusion that the defendant's behaviour was influenced by the corrupting and damaging influence of this man is compelling. Sexual conduct was normalised, and the opportunity to offend was created by his proximity to the complainant.

The defendant was referred to a psychologist, Vanessa Gale in early 2019, not long before his 18<sup>th</sup> birthday. I was given a report written by Ms Gale dated 21 February 2020. He attended six sessions between February and April 2019. Ms Gale's psychometric screening is reported as indicating very high levels of depression, anxiety and stress, a likelihood of mental disorder, and declining mental health over the consultation period. The mental disorder detected by the assessment is not identified except to report that the sexually deviant behaviours to which the defendant was exposed created "Learned behaviour which may have manifest into cognitive distortions of 'errors of thinking' that allowed to act on his sexual urges." It is not disputed by the prosecution that the inference to be drawn from these combination of circumstances is that, at the time the offences were committed, the defendant had a reduced appreciation of the wrongness of his acts.

The defendant has no prior convictions. Given his age at the time the offences were committed I have the option of sentencing him as a youth under the Youth Justice Act. Because he is now an adult, I have decided not to do so, although the principles for sentencing young offenders stated in that legislation apply, in my view, with equal force. The defendant's counsel, and a pre-sentence report describe the defendant's present circumstances. He is now aged 19. He has a stable and supportive relationship with his mother and step-father. He lives with his family and siblings, including the complainant. A family safety plan and protective strategies are in place to prevent a re-occurrence. He is attending school. He has part time employment as well as a work experience placement and has obtained hospitality trade certificates. He now knows that what he did should not have occurred and has feelings of disgust with himself. His mother reports a marked change in his behaviour since the offending both against and by him has come to light. Mitigation arises from his plea of guilty. Although it was not an early one there was never any real prospect of a trial at which the complainant would have to give evidence. The author of the pre-sentence report suggests community based supervision in order to facilitate the recommendations for further psychological intervention contained in an assessment prepared by Ms Gale. To me, the need for psychological or psychiatric treatment is obvious and pressing, and the need for a community based order to mandate the provision of it is clear.

In the normal course it is to be presumed that acts such as those perpetrated against the complainant would cause serious psychological damage. There is no victim impact statement. It was asserted by the prosecution that the complainant was scared while the incidents of sexual contact occurred and, as a result of his conduct, she tried to stay away from him. However, both the complainant and the defendant are likely to have been seriously harmed by the acts of another person. It is impossible to determine the extent to which the harm suffered by the complainant has been compounded as a result of the acts of the defendant, but as serious as those acts were, their seriousness pales by comparison to the criminality involved in the acts perpetrated upon her by the adult to whom I have referred.

The defendant should not be made subject to an actual prison sentence. He is not a suitable vehicle for general deterrence. In light of what has already happened to him, punishment by imprisonment would be cruel. He should not be exposed to the corrupting influence of prison. There is some need for specific deterrence, but the overwhelming sentencing consideration is his rehabilitation. His rehabilitation, if it can be achieved, will protect the community by reducing the risk of re-offending. I have concluded that a sentence of imprisonment should be imposed to mark the objectively serious nature of the conduct but, in light of the causes of his offending and his age at the time, I have substantially reduced the length of the head sentence and I will wholly suspend it.

I am required to make an order under the *Community Protection (Offender Reporting) Act* 2005 unless I am satisfied that you do not pose a risk of committing a reportable offence within the meaning of that term in the legislation in the future. Given the nature of these offences, the contents of Ms Gale's report and the pre-sentence report, I am not so satisfied.

AWM, you are convicted. I make an order directing that the Registrar under the *Community Protection (Offender Reporting) Act* 2005 cause your name to be placed on the Register and that you comply with the reporting obligations under the Act for a period three years from today. You are sentenced to imprisonment for 10 months. I wholly suspend that term for two years. It is a condition of that order that while it is in force you do not commit an offence punishable by imprisonment. It is important that you understand if you breach that condition

the term of imprisonment must be activated unless that is unjust. I make a community corrections order for a period of two years from today. The core conditions of that order will be specified in the order you will be given and include that you not commit an offence punishable by imprisonment, that you report to and comply with the directions of a probation officer, that you must not leave Tasmania without permission and that you must notify of any change of address. I impose special conditions that you must, during the operational period of the order, submit to the supervision of a probation officer as required by the probation officer, and you must attend educational and other programs, undergo assessment and treatment for alcohol or drug dependency, submit to testing for alcohol or drug use and submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer. If you breach any of those conditions you may be brought back to court and re-sentenced. There will also be a condition that you report forthwith to a person at Community Corrections so that you can be inducted into that order but, given the hour today, that can be before 5.00 pm on Monday 19 October 2020.