

STATE OF TASMANIA v ASHLEY WILLIAM BAVERSTOCK 3 DECEMBER 2020
COMMENTS ON PASSING SENTENCE PEARCE J

Ashley Baverstock, you were found guilty by a jury of two counts of indecent assault. The offences were committed on 23 May 2017 against a female then aged 23 who has autism spectrum disorder and an intellectual disability. At the time you were aged 53. It is for me to find the facts for sentence, but the jury must have been satisfied beyond reasonable doubt of the truth of the account given by the complainant of these two offences. She was in the public library. You approached her when she was placing books on a shelf. You touched her breasts and vagina on the outside of her clothing. She did not consent and did not like what occurred. She immediately attended her father's workplace nearby. As soon as she managed to see him she told him what had happened, but did not want to go to the police. That same evening, at about 8pm, you went to the supported accommodation unit in which she lived. I am satisfied beyond reasonable doubt that she did not intend to invite you to visit that night, although it is possible that you took something she said as amounting to a general invitation. In any event, it was quite inappropriate for a man of your age to attend the home of a girl of her age and with her disability who lived alone. I am satisfied that your visit was motivated by a sexual interest in her. She let you into the unit. The jury was satisfied beyond reasonable doubt that, while you were present in the unit, you again touched her on the breasts and vagina, outside her clothing and without her consent. In cross-examination she agreed that while you were there she sat on your lap. The circumstances which led her to do that were not explored. I infer that her decision to let you into the unit and to sit on your lap resulted not from a reciprocal sexual interest, but likely from the combination of other circumstances: because her conditions made her less able to appropriately read social cues, because of confusion about how to respond to a visit from a man who had inappropriately touched her earlier the same day, and perhaps because of a wish to please and to not offend. I am satisfied beyond reasonable doubt, as the jury must have been, that, as was the case earlier at the library, she did not agree to the touching and that she did not like it. You were acquitted of one other count of indecent assault and a count of aggravated sexual assault said to have been committed at the unit.

You are now aged 57. You are single and have no children. You had an unremarkable upbringing and education and have maintained contact with members of your family, but you have led something of an unconventional and idiosyncratic existence. You have not engaged in meaningful employment. I was shown a report from a psychiatrist from 1997 which recommends a disability pension based on what is referred to as significant psychiatric morbidity, best classified then as borderline personality disorder. I ordered a pre-sentence report. You advised the author of the report that you have received social security benefits since 1997. However, throughout your life you have consistently resorted to dishonesty. This is reflected in your criminal record in this State and in other States, which stretches back to 1983. You have variously lived in New South Wales, South Australia, Victoria and Tasmania. In each place you have been sentenced for dishonesty offences, mostly in the nature of burglary and stealing and fraud. You have served many terms of imprisonment. You have lived in Tasmania since 2005. Apart from a traffic regulation offence you have not offended since being sentenced in 2011 for a common assault. You complied with the conditions of a community based order made at that time. You now rely on social security and have managed to secure and maintain public housing since 2009. You do not currently receive treatment or support for any psychiatric condition. It is not submitted by your counsel that any psychiatric condition, or any other of the medical conditions from which you suffer, is materially relevant to sentence.

The prior convictions most relevant to these crimes occurred in Victoria and Tasmania. In 1997 there was a conviction for a public obscene exposure. In 1999 in Victoria you were sentenced to imprisonment for a total of 12 months for two counts of an indecent act with a child. Your counsel submitted that these offences also constituted unplanned opportunistic public touching of young girls, over clothing. In 2003 you were imprisoned for stalking and other offences related to a difficult relationship with a female of appropriate age. Then, in Tasmania in 2006, you were sentenced by a magistrate to a wholly suspended three month term for one count of common assault, one count of assault with indecent intent and one count of indecent assault. Whilst there has been no similar offending since then, specific deterrence and protection of the public assume some significance as sentencing considerations.

Those in the position of the complainant are entitled to be protected by the law from indecent assaults of this nature. The assaults of which you were found guilty were not of a particularly serious type. However the complainant was vulnerable by reason of her age and her intellectual disability, which made her less able to respond to your unwanted advances and communicate her wishes. I am satisfied that you offended knowing of her disability, not only because it is readily apparent, but also because you knew her and knew where she lived. There was a considerable discrepancy in age and a power imbalance. One of the assaults occurred in public. The impact on the complainant is described in her victim impact statement. She was afraid at the time and since then has remained nervous and less trusting of others. For more than two years she was scared to go back to the library which, until then, formed an important part of her life. She has become more reluctant to go out and has required treatment from a psychologist to address these issues. Because of the need to protect the public, punish you and to vindicate the victim, imprisonment is the appropriate sentence although I will suspend some of the term as an incentive for you to not re-offend. I will make orders for supervision on your release with the intention that, if possible, you may be directed to programs aimed at addressing offending of this nature.

Ashley Baverstock, you are convicted counts 1 and 2 on the indictment. I am not satisfied that you do not pose a risk of committing a reportable offence within the meaning of that term in the *Community Protection (Offender Reporting) Act 2005* in the future. I make an order directing that the Registrar cause your name to be placed on the Register and that you comply with the reporting obligations under that Act for a period seven years from your release. I impose one sentence. You are sentenced to imprisonment for 12 months from 22 October 2020. I suspend six months of that term for two years from your release. It is a condition of that order that while it is in force you do not commit any offence punishable by imprisonment. If you breach that condition then a court must order that you serve that term unless it is unjust. I impose a further condition that, for one year from your release, you are to be subject to the supervision of a probation officer. The conditions which the law imposes on that order include that you must report to a probation officer at 111-113 Cameron Street, Launceston within one day of your release, you must, during the operational period of the order, report to a probation officer as required by the probation officer and comply with the reasonable and lawful directions of a probation officer or a supervisor, you must not, during the operational period of the order, leave, or remain outside, Tasmania without the permission of a probation officer and you must, during the operational period of the order, give notice to a probation officer of any change of address or employment before, or within 2 working days after, the change. 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, 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.