

COMMENTS ON PASSING SENTENCE

WOOD J

DKE has pleaded guilty to one count of persistent sexual abuse of a child, contrary to s 125A of the *Criminal Code*. Until a recent amendment of the *Criminal Code* the crime was known as maintaining a sexual relationship with a young person under the age of 17 years.

The child is the defendant's half-sister and the incidents of sexual abuse took place between 1 December 2019 and 14 March 2020 when she was 4 years of age. At the time of the incidents the defendant was 14 and for the last three occasions, was 15, having been born in February 2005. The defendant lived with his mother and her husband, and his three siblings including the complainant. In the relevant period he was occasionally left to care for the younger children.

There were five separate occasions when he indecently assaulted his sister. Each of the occasions were factually similar. On each occasion he was babysitting the complainant sometimes on her own or with his 11 year old brother, while his mother and her husband were out. Each occasion involved the crime of indecent assault by touching the complainant to her vagina and/or genitalia with his fingers and mouth. On each occasion he told her not to tell anyone about what had happened.

The first occasion was in late 2019 during the school holidays. The defendant was in his bedroom with the complainant and told her to take her clothes off and they got into his bed. He began touching the complainant to her vagina and/or genitalia. He tried to penetrate her vagina with his finger. The complainant said "stop" and he did. He then licked her to the vagina and/or genitalia for approximately 30 seconds before stopping. The complainant said to him that it tickled. The defendant told her to put her clothes on and to get out of his room.

The second occasion was a week or two after the first occasion. The complainant walked into the defendant's bedroom and asked him to get her a drink. The defendant took the complainant to the lounge room. There they were lying down on the floor and he used his finger/s to touch and rub the complainant's vagina. Again, he tried to penetrate her vagina with his finger, she asked him to stop and he did not penetrate her vagina. He went on to lick her to the vagina, genitalia and anus for approximately 5 minutes.

The third occasion occurred a considerable time after the second, in mid-February, shortly after school had resumed for the year. By now the defendant was 15. The complainant had been bathed and was in the lounge room without any clothes on. The defendant watched the rest of the family leave and then approached the complainant. He told her to bend over which she did. She was lying down on her stomach and he touched her vagina, and attempted to penetrate her vagina with his finger but did not do so. He then licked her to the vagina, genitalia and anus. He continued to do this until family members returned home. At one point he exposed his penis and asked the complainant, "can you put this in?" and she responded, "no". His penis was not erect and he did not attempt penetration.

The fourth occasion occurred on approximately 9 March 2020. The defendant had been asked to look after the complainant during an evening. The complainant was in her bed, lying on her side. The defendant got into her bed, facing her. He touched her to the vagina and/or genitalia

and attempted to penetrate her vagina with his finger but did not achieve that. He then licked her to the vagina and/or anus for approximately 10 minutes.

On the final and most recent occasion, the adults were away from the house for a short period and the defendant and his younger sibling and the complainant were at home with the defendant minding them. The defendant and the complainant were in the lounge room. The complainant was lying on her stomach and the defendant touched her vagina. The complainant said "ouch". The defendant licked her to the vagina, genitalia and anus.

The defendant exposed his erect penis to the complainant and asked if he could put it into her vagina. The complainant said no, and there was no attempt by the defendant to do so.

These occasions came to light on 14 March 2020 when the complainant's mother overheard a disclosure by the complainant to her brother that the defendant licked her "bum". Consequently she had a conversation with the complainant about what had happened. The complainant told her mother that the defendant licked her, and pointed to her genitalia.

The following day the complainant's mother confronted the defendant and asked him whether he had sexual urges toward the complainant and he replied 'yes' and it was apparent that he was upset. Initially he denied an allegation of sexual abuse and later made an admission, but said the complainant had asked for that to happen. He told his mother that the complainant was a trigger for him and whenever she is around, he cannot control his urges. He said he did not wish to be around her anymore and for this reason did not want to live at home anymore.

The police were contacted and the defendant was interviewed by police. He made honest and comprehensive admissions to police about what he had done. The detail of those admissions provide the foundation for the facts before the Court with respect to the five occasions. This detail of the number of occasions and what occurred is the basis of the charge and was not otherwise available information. The complainant disclosed the defendant's conduct in general terms but did not specify any particular occasions.

The defendant also told police that he started getting uncomfortable around his sister and that "there were urges in my head". He said that when he had to babysit her it was really hard holding those urges. He described that the urges are almost like "adrenaline", like you can do whatever you want and no one is around to do anything about it. He said that after the first occasion, he felt very guilty. He said to police that he felt disappointed that he could not be around his sister anymore, and that he had let her down, and let everyone down, including himself.

The defendant spoke frankly with police about other matters and told police that when he was eleven he had other urges of a different kind and he would strangle his sister. He told his mother about that and she had taken him to the hospital and then after that he did not have the urge to hurt her. He described other urges such as an urge to break his own jaw.

After the interview, the defendant was taken to the Royal Hobart Hospital for psychiatric assessment.

The defendant is now 15, he will be 16 next month. He has no past history before the courts.

I have been provided with a considerable amount of information regarding the defendant's mental health issues. I have a report from psychiatrist Dr Anagha Jayaker, Paediatric

Outpatient Clinic dated 15 June 2020. The opinion provided is that on available information, the defendant meets the criteria for Autism Spectrum Disorder, and deficits were identified in his social communication and social interaction. His difficulties that were described as at a level requiring substantial support. He displayed a tendency to restricted and repetitive interests, activities and behaviours, again requiring support.

I also have the benefit of a report from the defendant's treating psychologist Dr Irene Panagopoulos dated 9 November 2020. The defendant was referred to her for sex-offence specific counselling by Dr Jayker on 2 July 2020. He has attended regular sessions on a weekly basis. Dr Panagopoulos identifies factors that contributed to his offending. When he was about 10 years of age he was introduced to pornography by a peer. He began watching pornography videos and was exposed to videos involving step-siblings which he found disturbing. Evidently at the time of offending there was increased stress and anxiety in the family home resulting from difficulties arising from the blended family situation. I note in this context that the defendant has a lengthy history of anxiety. Dr Panagopoulos considered these factors, the exposure to pornography and his anxiety, in the context of his autism spectrum disorder. She noted that his condition did not cause him to offend but his symptom of engaging in restricted and repetitive patterns of behaviours and interests, coupled with increased stress and anxiety in the family home made it difficult for him to independently reduce or self-regulate his access to pornography. She noted, it is more difficult for children with Autism Spectrum Disorder to resist unvetted access to pornography than for neurotypical children. Dr Panagopoulos also mentions that another feature of this disorder is a lack of maturity in terms of the ability to recognise and understand the emotions and motives of others, and that this diminished the defendant's capacity to fully understand the impacts of his offending on the complainant, even though he did understand that his behaviour was wrong.

As I have mentioned, the defendant has been engaging in a lengthy course of treatment. He has engaged well. He has an understanding of factors that led to his offending. He recognises now that he can manage urges or impulses. He is described by Dr Panagopoulos as accepting "full responsibility for his offending with no evidence of minimising, and he presents as distressed by his offending with a genuine desire to change." He has expressed sympathy for the complainant and a strong desire to never reoffend.

He has a range of protective factors that reduce his future risk of reoffending. He does not present with attitudes supportive of sexually abusive behaviour. He is engaged with social and community supports through school and sport and demonstrating healthy age appropriate interests in terms of intimate relationships.

I have been provided with a more recent updated report from Dr Panagopoulos dated 18 January 2021. He has had further treatment sessions and has continued to show positive progress. He has worked on a comprehensive risk management plan involving a family session with his mother developing strategies such as communication and to seek support. He demonstrated he was able to apply the strategies he has learnt. He has continued to develop in terms of pursuing positive activities such as in sport at a high level. He is now considered as being low risk of sexual re-offending.

His treatment is now at a maintenance phase involving consolidating the strategies he has learnt. Treatment is to be tapered and a referral to a ASD specialist will be undertaken as

recommended by both Dr Jayker and Dr Panagopoulos. This will provide specialised support in navigating social and sexual relationships in the future.

In addition, I have reports from the defendant's general practitioner which provide helpful context for various referrals which have taken place. I have a comprehensive presentence report from Youth Justice dated 18 December 2020. The report notes comments made by the defendant about the psychological support he has received. It seems that the insight he has gained and the strategies he now has, have been very helpful and empowering in terms of his determination not to reoffend. This report refers to the defendant's expression of deep regret and empathy for the complainant. He is assessed by Youth Justice using their test inventory as low risk of reoffending.

The defendant has strong family support. He is living with his grandparents in a safe and nurturing environment. This is a long term arrangement and he will not be returning to live with his mother and her partner and his siblings. His grandparents are understanding of his needs and provide access to healthy living and outdoor pursuits. He is doing well at school and faces a positive year ahead in grade 10.

These arrangements have been put in place by the family to provide the best for the defendant and complete protection for the complainant. Additional supports are provided by the defendant's father, and other family members such as his uncle and wife. There is a strong family commitment to supporting the defendant, and I have been provided with statements which attest to that support. He maintains a positive relationship with his mother.

The defendant pleaded guilty at an early stage. The complainant and his family have avoided the trauma of a trial.

The defendant has committed a serious crime that has involved a terrible wrong to his half-sister. He understands the gravity of his actions. It has resulted in irreversible changes to his life. He has faced up to what he has done and shown remorse, shame and guilt. He has taken responsibility for his actions. He has worked with his psychologist in order to understand factors that led him to act as he did and to put in place strategies to manage any impulses he might have in the future in order to make sure he does not ever behave like that again.

He is a young man who is vulnerable in various respects because of his autism and is learning how best to manage his condition.

He has made excellent progress. He has very good prospects of rehabilitation.

A dominant consideration is the protection of the complainant. The family arrangements put in place have addressed that. The steps taken by the defendant to reform are also relevant here. Another dominant consideration is the rehabilitation of the defendant and that the sentence should also promote that sentencing goal. This goal coincides with the interests of the community, and the need for community protection.

General deterrence will be reflected in just measure in the sentencing outcome having regard to his individual circumstances, his vulnerabilities, and age. In this case there is little need for specific deterrence other than to reinforce the seriousness of his offending, the defendant has been deterred, in other words, deflected from his offending.

The defendant will be sentenced under Part 4 of the *Youth Justice Act*. For the reasons I have given, I have determined that a just and appropriate sentence is suspended detention pursuant to the *Youth Justice Act*. This accords with the recommendation of Youth Justice. I have weighed it up very carefully and I am satisfied it is the appropriate sentence.

I impose a suspended detention order. I impose a period of 15 months' detention which is wholly suspended for the maximum period of 12 months from today, during which you must not commit an offence which if committed by an adult could be punishable by imprisonment.

This sentence reflects the seriousness of your offending and the inevitable harm caused to the victim while promoting your rehabilitation. I note that under this sentence, strict conditions are automatically imposed including supervision which will be provided by a youth justice worker.

I have given careful consideration to whether a conviction should be recorded. In this regard, I have been assisted by the thorough submissions of counsel.

In my view, in this case, such an order would be counterproductive to the Court's reformatory objectives. It would impact upon the defendant's rehabilitation. He is particularly concerned about this outcome and his perception is relevant. He will feel it as a stigma more than most. I have determined that despite the nature of the offence, it is not required. The suspended detention order is sufficient punishment and appropriate vindication of the complainant and conviction is not required for other reasons given factors such as his low risk of reoffending. I record no conviction.

In terms of an order pursuant to the *Community Protection (Offender Reporting) Act*, I must make an order unless I am satisfied that you do not pose a risk of committing a reportable offence in the future. I am satisfied that you are low risk but not satisfied that you pose no risk. I have a discretion in terms of the length of the order. The maximum reporting period for a young offender is reduced compared to an adult by virtue of s 25 of the Act. I order that your name be placed on the register pursuant to that Act and that you comply with the reporting obligations under that Act for a period of two years from today.

I simply note that it would be preferable that in fulfilling any reporting obligations the defendant not have to mix with adult offenders and be effectively quarantined from their potential adverse influence.