

STATE OF TASMANIA v AGM
COMMENTS ON PASSING SENTENCE

20 APRIL 2021
PEARCE J

AGM, you were found guilty of persistent sexual abuse of a child. The victim of the crime was your daughter, to whom I will refer by the fictional name, Carina. Carina was born in 2000 of a relationship you had with Carina's mother when you were both very young. You separated a few months later and Carina was brought up by her mother. You did not play a further role in her life until she was about 5 by which time you had re-partnered and lived not far away. She began occasional visits overnight and at weekends which continued from then until Carina was about 14. For at least the last few years of that period you lived interstate but you saw her either when she visited you or when you returned to Tasmania from time to time. The State's case was that on five specified occasions when she was staying with you in Tasmania between about 2005 and 2014 you committed unlawful sexual acts. It follows from the jury verdict that it was satisfied that at least three of those unlawful sexual acts were proved. I think it also follows from the verdict and the issues at trial that the jury accepted the credibility and reliability of Carina's account of the acts committed against her. In any event, I am also satisfied beyond reasonable doubt of the truthfulness and reliability of her evidence and I am satisfied beyond reasonable doubt that all five acts were committed substantially as she described. To me she presented as an honest witness who, taking account of her age, gave a description of events with sufficient logical consistency and detail, and in a manner, such that it was highly unlikely to have been fabricated. Her evidence was supported by other evidence to which I will refer.

The first specified occasion was when Carina was 5 or 6. She stayed overnight in the house in which you then lived. She said that she had gone to visit you and her sisters from your new relationship, but you were the only one at home. While she was in a bed you entered her room, put your hand down her pants and touched her vagina, first on and then under her underpants. That was an indecent assault. The second occasion was when she was 7 or 8. She stayed with you at your father's house in a rural area. You slept in the same bed. You touched her with your hand on her vagina and then rubbed your penis on her vagina on the outside of her underpants. She tried to call out to your father, but you put your hand over her mouth. The acts she described amounted to the crime of indecent assault. The third occasion was when she was 9 or 10. She stayed with you at your mother's home. You entered the room in which she was in bed, rubbed her vagina with your hand and then penetrated her vagina with your finger. At the time, that constituted the crime of aggravated sexual assault. The fourth occasion occurred when she was aged between 10 and 12. You and she were staying alone at the home of a friend. She was in bed in the lounge room. You came out of your room naked and sat over her. You moved your penis toward her vagina but she resisted you by kicking, and no further contact was made. That was an indecent assault. The fifth and final occasion occurred in a bush shack owned by a friend when Carina was aged 12 or 13. You were sharing a bed on the floor. She gave evidence that you rolled over, held something she thought was a knife against her throat, took your pants off and penetrated her vagina with your penis. She said it did not happen for very long. After you turned over she went to sleep on the couch. There was no evidence that you ejaculated. That amounts to the crime of rape.

I accept the complainant's evidence with one exception. It concerns the rape. Carina's evidence was that she was pretty sure that a "pocket knife or something" was held against her throat. However she accepted that she could not be certain of what the object was. There was evidence of a phone call made later in which she raised the events of that day with you and recorded the call. In that phone call she said that you held her to the ground and choked her, but there was no mention of a weapon. I am left with a doubt about that aspect of her evidence. I am satisfied

that you held her down with your hand to her throat, but I am not satisfied beyond reasonable doubt that the rape was accompanied by use of a knife or any other weapon.

Your offending did not come to light until, in 2015, Carina reached a sufficient level of awareness and understanding, and summoned the courage and will, to tell her friend and her mother something of what had taken place. Fearing she would not be believed she phoned you twice. On the second occasion the call was recorded. I accept the submission of counsel for the State, made to the jury, that the fact that the phone calls were made at all, tends to support the truthfulness of Carina's evidence. I am also satisfied that the statements made by you during at least the second phone call, and your failure to disavow what she put to you, amounted to express and implied admissions of your guilt.

You are now aged 38. Your prior convictions are mostly for driving offences. You have some record for offences of violence but it is relatively minor. You have no prior convictions for sexual offences, against children or otherwise.

As a result of a request by your counsel I obtained a pre-sentence report dated 12 April 2021 from Dr Anthony Fernando, a delegate of the Chief Forensic Psychiatrist. Some of your personal circumstances emerge from that report. You were born and grew up in Tasmania. You described a childhood adversely affected by physical, emotional and sexual abuse. You are illiterate. From an early age you have abused alcohol and drugs but, with counselling support, you have been abstinent from both for the last three years or so. You have no history of committing sexual offences and you have not been to prison before. You have a partner, four biological children and two step children. You have some history of problems with your mental health. However, in Dr Fernando's opinion, you do not suffer from any pervasive anxiety related disorder, mood disorder or psychotic illness. You have a history of depressive illness which has led to some suicide attempts but it is closely intertwined with substance abuse. You may have some mild characteristics of autism but not sufficient to satisfy the legal criteria for that condition. In summary, Dr Fernando did not identify any mental health condition or impairment sufficient to be relevant to sentence.

The seriousness of child sex offences, and the factors relevant to sentence, are well established. I also have regard to the aggravating circumstances I am required to take into account by the *Sentencing Act* 1997, s 11A. These crimes were all committed when Carina was subject to your care, supervision and authority. You committed a grave breach of the trust placed in you by Carina and her mother. There could be no greater breach of trust than sexual abuse of a child by a parent. On every occasion, with the possible exception of the final one, she was under the age of 13 years. If she was 13, or even 14 or 15, on that final occasion, it makes no material difference to the gravity of your crime and your criminal culpability. You ignored distress and, in the case of the rape, used force to prevent or overcome resistance. Your daughter was offended against on multiple occasions in progressively more serious ways over the course of many years. Your conduct was potentially corrupting and carried enormous potential for harm. The prohibition on sexual abuse of children is founded on the presumption of harm. In her victim impact statement Carina describes the type of effects which may be expected to result from your crime. She is now aged 20. She was made to feel frightened and unsafe, especially around adult males. She has had bad dreams, at first very frequently, but less often until in the lead up to the trial when they became worse. Her ability to form romantic relationships has been adversely affected. She avoids sexual contact and is less trusting. It is likely that these effects will be long lasting and possible that other impacts will emerge over time. The sentence must not be increased because you exercised your right to trial. However, you are not entitled

to the mitigation a plea of guilty would have attracted, especially in cases like this where a plea avoids the need for the complainant to be subjected to the trauma of having to prepare for and give evidence at a trial, and be publicly cross-examined about such intimate matters.

You should ordinarily suffer the same penalty as if the offences were charged separately. The total aggregate sentence is to be moderated by proportionality and totality.

AGM, you are convicted. 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 of 10 years from your release. You are sentenced to imprisonment for six years from 2 December 2020, the date you were remanded in custody. I order that you not be eligible for parole until you have served half of that term.