

STATE OF TASMANIA v NATHAN LEE WECHSLER
COMMENTS ON PASSING SENTENCE

8 JUNE 2021
GEASON J

Mr Wechsler, you appear for sentence on your plea of guilty to the following offences:

- 1 On indictment 110/2020 – two counts of grooming with intent to expose a child to indecent material;
- 2 On indictment 279/2020 – a further count of grooming with intent to expose a child to indecent material;
- 3 On complaint 3685/2019 – you have pleaded guilty to a count of failing to comply with reporting obligations, contrary to the *Community Protection (Offender Reporting) Act*;
- 4 On complaint 3465/2020 – you have pleaded guilty to counts 1, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15 and 16, each of which alleges a breach of s 33 of the *Community Protection (Offender Reporting) Act*, count 1 in respect to advising changes to your personal details, and the remaining counts in respect of breaches involving a failure to report contact with a child.

I have accepted pleas of guilty to those matters through counsel.

The period covered by the indictment 110/2020 is 1 February 2017 to 31 July 2017, in respect of count 1, and 13 December 2018 and 16 December 2018 in respect of count 2.

The period covered by indictment 279/2020 is 30 April 2019 to 7 February 2020.

All of the conduct is similar: In 2017 when you were aged 26, the complainant was travelling on the same bus as you. She was wearing her school uniform. You sat in front of her and started talking to her. You introduced yourself to her as Nathan, and told her you were 26 years old. She told you that she was 14 years old.

You gave her your telephone number. In May 2017 she noticed that you had sent her a Facebook friend request. She accepted it. Between May and July 2017 you regularly sent messages to her, asking her to send you naked pictures of herself.

She became concerned about the messages and spoke to a friend about it. She contacted police in July 2017. She provided them with the messages, many of which were of a sexual nature inviting her to dress in a particular ways, such as in leggings, and a bra and panties and to flaunt her body.

The content became more serious, graphically describing sexual acts you wanted to engage in with her. These included sexual intercourse and a threat to "viciously penetrate her anus". You told her that she could not "squirm her way out" and she would "just have to take it". You told her that she would not be able to get anyone's attention. You threatened that you would use a lighter to burn her genitalia, and that you would drop hot wax into her. She bravely and forcefully resisted all your commentary.

Police executed a search warrant at your home in September 2017 and your mobile phone was seized for examination. It revealed messages of a sexual nature had been sent to multiple

females, some of whom were under 18 years of age. This demonstrates that the conduct that I have described was not an isolated incident. In January 2019 you were formally charged. You did not participate in a video recorded interview.

This offending occurred whilst you were on bail for other offending, an aggravating matter.

The next offending occurred when you were aged 27 years.

By way of background, on 15 December 2017 you had been sentenced by Chief Magistrate Geason for making a communication with the intention of exposing a person under the age of 17 years to indecent material. The sentencing order imposed by her Honour included an 18 month probation order with conditions, and a reporting obligation for a period of three years pursuant to the *Community Protection (Offender Reporting) Act*. Those obligations required you to advise police within seven days of any email addresses, internet user names, instant messaging names, chatroom user names, or any other identities used by you online or in other electronic communications. You were required to provide passwords associated with those user names.

On 10 January 2019 police conducted a check on you under the *Community Protection (Offender Reporting) Act*, and located a mobile phone which was seized for examination. There were two applications running on that phone that were not disclosed in accordance with those reporting obligations. The applications were Instagram and Bingo live. These constitute charge 1 on complaint 36185/2019.

It was discovered that the Bingo Live account was being used for communications of a sexual nature. The particular conversation located by police involved a person who was a female and 15 years of age. In that conversation, which occurred late in the night, you told her that you had an erection and "that you like them young". You sent her a photo the content of which was unclear. The exchange continued and she encouraged you to "play with it", before you asked her for her number. You then sent her a video showing you masturbating. You asked her to do the same for you. In a further message sent by you on 16 December 2018 you claimed that you were about to ejaculate.

The next offending occurred when you were aged 28 years of age, between February 2017 and July 2017, (count 1 on the indictment filed in April 2020), whilst the matter the subject of the sentencing order made by Chief Magistrate Geason in December 2017 was progressing through the court.

You committed further offences between 13 December 2018 and 16 December 2018 – count 2 on the same indictment, clearly not deterred by the fact that you had been sentenced by Chief Magistrate Geason, a little under a year earlier.

The facts are that on 19 December 2019 police conducted a check on you in accordance with the requirements imposed upon them under the *Community Protection (Offender Reporting) Act*. As part of an order made in December 2015 you had been required to advise police within 24 hours of any children with whom you had been in contact. During this check police located applications on your phone that you had not reported as required, comprising five undisclosed Facebook accounts. You had told police that you only had one such account. Each account contained a different profile picture of you.

Whilst police were in possession of that phone for examination, you sourced another device and you continued to communicate with children without reporting such communications as required. The details of those communications include the following:

- On 30 January 2020, you communicated with a Ms H – charge 4 on complaint 3465/2020.
- On 10 January 2020, you communicated with a Ms T – charge 11 on complaint 3465/2020.
- On 12 January 2020, you communicated with a Ms B – charge 12 on complaint 3465/2020.
- On six occasions between 6 January and 4 February 2020, you communicated with a Ms M – charge 13 on complaint 3465/2020.
- On three occasions between 24 January 2020 and 7 February 2020, you communicated with a Ms W – charge 14 on complaint 3465/2020.
- Between 3 and 9 February 2020, you communicated with a Ms B – charge 15 on complaint 3465/2020.
- On 11 occasions between 6 January 2020 and 10 February 2020, you communicated with a Ms S – Charge 16 on complaint 3465/2020.

In addition to various communications, you exposed the following children to indecent material:

- Ms H – you messaged, telling her you would anally rape her with a broomstick.
- Ms M – on 6 March 2018 you messaged, asking her to send you a cute slutty posed picture of her full body.
- Messages were sent to a Ms B between 30 June 2019 and 12 January 2020 which included conversations wherein you told her she was super cute and super sexy, and asked her to send photos to you of her body; you sent her a photograph of your penis. You also tried to video call her on 3 October 2019.
- Ms M was messaged on 2 July 2019 with a photograph of your penis and a message to the effect that you were masturbating; you sent a similar picture on 31 January 2020 and attempted a video call on 4 February 2020.
- Ms W was exposed to five photographs of your penis, sent lewd messages, and a video of you masturbating. You suggested to her that she might engage in anal sex with you. You contacted her again on 1, 2 and 3 May 2019, and continued the explicit messaging, as well as forwarding another photo of your penis.

You were arrested on 15 April 2020. This time you participated in a video recorded interview. Under caution you said you did not remember that you had five Facebook accounts; that you were the only person using the phones; that you found the girls through random advertisements on Facebook, and that you knew they were young; that the photos and videos were of you; that you contact young girls "probably a lot", and that you do not know why you do it, you do not mean to do it, and that you thought that you needed help or medication. You were formally charged and remanded in custody.

For the purposes of this sentencing exercise I have been referred to the comments made on sentencing you in November 2011, following a special hearing under the *Criminal Justice (Mental Impairment) Act* in relation to a single count of communicating with intent to procure a person under the age of 17 years to engage in an unlawful sexual act. You were 20 at the time, and nearly 21 when you were sentenced. There it was observed that you suffered a mild intellectual disability. In your engagement with Dr Evenhuis, who prepared a report at that time, you told him that you had never had a girlfriend and that you were not seeking one. You

claimed that you were not able to identify any close friends outside of your family. It was suggested in that report that you felt more comfortable interacting with younger people, based upon your own level of maturity and a perception that you were less likely to be rejected by them. It was also suggested that the emotional distance facilitated by electronic communication may have enabled your inappropriate behaviour. You were described as an inexperienced, immature young man with low self-esteem and lack of confidence when interacting with females. It was indicated in that report that you had never attempted to progress to an actual sexual relationship with a young female.

Dr Jordan expressed similar views at the time, noting risk factors included that you had been a victim of child abuse yourself, that you had relationships and employment problems, and a lack of realistic future plans. On that occasion the court considered it appropriate to make orders requiring you to submit to medical, psychological or psychiatric assessment as directed by a medical practitioner, to comply with reasonable and lawful directions of such practitioner, and to notify Forensic Mental Health Services of change of residence or a change in schooling, training or employment. That order was operative for a period of three years.

For this sentencing I have two reports. One from Dr Georgina O'Donnell prepared in November 2019, and another from Dr Jordan dated September 2020.

Dr O'Donnell's report focuses on your fitness to plead. Dr Jordan's report, which is of greater assistance to me discloses that he has interviewed you and has referred to his own earlier report from 2011, as well as two additional reports from Damien Minehan, a clinical psychologist. He reiterates his earlier expressed opinion that you have a mild intellectual disability: your IQ is measured at 63, indicating an extremely low range of intellectual functioning, exceeding those of only 1% of individuals of a similar age. He noted that you were treated for ADHD with medication until you were 18.

In respect of your history it is recorded that as a young person you were exposed to physical abuse and neglect. You were fostered at the age of 6 months and you remained in the care of foster parents until adulthood. Your childhood years with foster carers are described as nurturing and supportive.

You were harassed and bullied at school due to your intellectual disabilities, and you left at grade 10, moving to your own accommodation at aged 18 where you have remained. Over the last 10 years you have had extensive periods of support from various agencies, including the Community Forensic Mental Health Service. You are supported under the National Disability Insurance Scheme, and receive a disability support pension.

Your life is described as having become chaotic in the last five years. Illicit substance abuse is reported, in particular amphetamine-based substances, and you have described difficulties in maintaining your accommodation. You have not been employed for seven or eight years.

In 2010 you were sexually assaulted in your own property by two individuals who were known to you. One of them was convicted of rape, attempted rape and assault. Efforts have been made to engage with you for the purposes of providing you with psychological help in relation to that event, but it is reported that you have found it difficult to discuss this event. It is undoubtedly, and the Court accepts, a source of significant trauma.

Dr Jordan reports that you are unable to articulate any reason for your but he is satisfied that you experience a degree of sexual gratification from the type of communication you have been engaged in. You have acknowledge this. When you were asked how you might stop committing such offences, your suggestion was to "take the internet away". You could not however identify any personal internal factors that might give an explanation for your conduct. You did allude to the concurrent use of amphetamines as a factor. To Dr Jordan you were able to acknowledge that your actions were wrong, but you said that at the time of the offending, you just "do it".

Dr Jordan is of the opinion that your behaviour is sexually deviant, and that the pattern of offending in attempting to contact minors indicates the presence of paraphilia. This offending has consistently involved female minors, and it is noted that the communications suggest your awareness of the age of the females with whom you were engaging. You appear to become sexually aroused from attempting these types of communication.

In relation to the application of the *Verdins* principles, Dr Jordan opines as follows:

- 1 There are no grounds to reduce your moral culpability. Though you struggle to understand the impact of your actions, you were aware that it is wrong and in breach of the conditions of your community protection order and the law.
- 2 In relation to the question of whether your condition may have a bearing on the kind of sentence that is imposed and the conditions under which it should be served, he notes that you are housed in a unit for those with intellectual disability and mental disorder, and that you are comfortable within that environment. It is his view that you will require more support at the end of any sentence when you return to the community.
- 3 As to whether considerations relating to general deterrence should be moderated or eliminated in your case, it is his opinion that there are no real grounds to do so, though he acknowledges that, given your low intelligence, your case may not be a suitable vehicle for that sentencing consideration.
- 4 As to whether specific deterrence should be moderated or eliminated as a sentencing consideration he cannot say, it is his opinion that the low level of intelligence and difficulty with communication makes psychological work with you difficult, and that makes it unclear whether a custodial sentence may have any future deterrent effect upon you. He considers that will only become clear at the end of any sentence.
- 5 He considers that you have not shown any significant mental health deterioration in custody, noting you are not prescribed medication for any other disorders, and accordingly expresses no view as to whether a sentence which involves custody will weigh more heavily upon you than it would a person of normal health. Relevantly, he does not consider that prison constitutes a significant risk to your mental health.
- 6 In terms of future treatment, it is his opinion that you require regular supervision and monitoring within the community. He suggests limiting your access to mobile phones and the internet, and the need to be supported by other measures. Supported accommodation with some supervision is likely to be useful for you. As well, you need to be in an environment where the chances of your using illicit substances are reduced.

- 7 He considers that it is highly likely that you will re-offend if you are not provided with such support and monitoring. Your paraphilic disorder explains your strong compulsion to carry out the type of offending to which you have pleaded guilty. He notes that you have found it difficult to engage in psychological therapy, and he considers practical measures will be of much more importance to reduce your future offending risk. Your future living environment is considered central to breaking the cycle of offending. (It is to that matter that recent efforts have been directed. Unfortunately those efforts are yet to come to fruition, though they are continuing).

In short, it is Dr Jordan's opinion that the *Verdins* principles are not engaged here. I accept that opinion.

I have a pre-sentence report which sets out your history. I have regard to its contents. You are not considered suitable for community service work. I have regard to your personal circumstances, many of which I have outlined, and the matters raised in the helpful plea from Ms Clark, and more recently the assistance I have received from Ms Monk.

Offending such as yours though detectable, is reasonably easy to commit. Online behaviour has the capacity to do enormous harm before it can be detected and stopped. It requires a significant allocation of community resources to monitor people such as you. The sentence I impose must deter you, punish you and mark the seriousness of your conduct. It is predatory and the potential for harm to your victims is real. You have offended like this before, and some of your offending occurred while you were on bail. Of course any sentence I impose must be individualised, to take account of the various personal circumstances to which I have referred. Again, I repeat, that is why we have delayed sentencing in the hope that an arrangement could be made for supported accommodation for you as a practical means of helping your rehabilitation and reducing the risk of reoffending.

I have decided that it must be for the parole board to consider your future accommodation arrangements, and I have no doubt it will take account of the view that such arrangement is not only beneficial to you, but essential if you are to avoid this sort of offending in the future.

I take account of your pleas of guilty and I discount the sentence I would otherwise have imposed by 20% to recognise the utilitarian benefit of those pleas.

I take account of the long period you have spent in custody awaiting determination of this matter. Of course, I will backdate the sentence I impose today to commence from the date you went in to custody, but I also recognise that the uncertainty of the outcome of these proceedings will have impacted you.

Mr Weschler, I convict you. I sentence you to 26 months' imprisonment in respect of the conduct in the indictments and on the complaints to which you have pleaded guilty, backdated to the date you were taken into custody. I take the view a global sentence is appropriate because of the similarity in the conduct, the fact that it is part of a continuing course of such conduct and it is the most effective means of addressing totality. I direct that you be eligible for parole after you have served 14 months of that sentence. The parole board can frame appropriate conditions upon your release, and will be in a position to assess the progress towards supported accommodation that I regard as essential for you.

I direct that your name be placed on the *Community Protection (Offender Reporting) Act* register for a period of 8 years. I do that because of the need to make provision for the protection of the community as an important feature of this case.