

Mr Airey, the defendant, has been found guilty by a jury of two counts of penetrative sexual abuse of a young person. The two charges arise out of one incident at the end of June 2018. The complainant, who I will call Jane, was 15 years old but a few weeks short of her 16th birthday. The defendant was then 44 years old. The facts as I find them to be are as follows. The defendant and Jane met in early 2018. He sold cannabis to some friends of hers, who seem to be a little older, and to her. From then, the defendant continued selling cannabis to Jane. They had contact two to three times a week. For each transaction, the initial contact was by Facebook Messenger, and they briefly met face to face when he delivered the drug. For a time, Jane paid the defendant but he started to give it to her for free, and then suggested she pay for it by sex. She tried to ignore it at the start but, as she described it, the defendant was very persistent and she eventually gave in. At first, she sent the defendant a photo of her naked breasts. This was about one month before the incident. She possibly also sent one photograph of her bottom. She offered to, but did not, send a video of her masturbating. I am satisfied that at a time before the incident, the defendant sent a message to Jane saying in short and very blunt terms, that he would like to have sex with her "right now". By message sent on 13 June 2018 the defendant referred to a "sensitive subject" and mentioned a simple way of making a "fair bit of weed without cash". Jane replied that she was at school, but suggested later. This seems to have been an interpretative summary, but Jane's evidence was that she asked to buy cannabis and the defendant said that would not give her any more until they had sex; that he would give her some afterwards. I infer some further messages were exchanged arranging a time. Jane said in evidence that she texted the defendant at about 3.00am the next day saying she was waiting; he was supposed to have been there much earlier. In any event, a short time after 3.00am, the defendant picked her up from outside her house, in his car. They drove a short distance to a cul-de-sac behind a primary school. At the time Jane was wearing a dressing gown and underwear. The two got into the back seat of the car. Jane knelt over the defendant and performed oral sex on him for up to five minutes during the early part of which he gained an erection. She then lay on her back. The defendant put on a condom and vaginal sexual intercourse took place for, Jane said, "roughly five minutes" which ended with the defendant ejaculating. Afterwards the defendant told Jane she was beautiful and what happened was amazing. He gave her two grams of cannabis. Jane contacted the defendant a few more times in order to purchase cannabis. She then blocked the defendant on Facebook Messenger, but he sent SMS messages by phone. These started in early September 2018. Eventually the defendant's partner took up texting Jane with the texts becoming most abusive. Ultimately in November 2018 the defendant's partner assaulted Jane, and Jane reported all matters to police that month.

When interviewed in January 2019, the defendant admitted that Jane performed oral sex on him but denied that vaginal sexual intercourse took place, saying that he could not get an erection at the time and that he generally needed the aid of Viagra. The issue of his mistaken belief as to Jane's age was raised in the trial. Obviously, the jury was satisfied beyond reasonable doubt that he knew Jane's age or had no belief that she was at least 17 years old, or that any mistaken belief was not an honest and reasonable one on the basis that he did not take all reasonable steps to ascertain her age. I am satisfied the defendant did not have a mistaken belief, but that he should be sentenced on the basis that, as revealed in his interview, he knew she was generally of a school age but had no real idea of her actual age. That makes him quite indifferent to the issue and reckless. I have Jane's victim impact statement dated 19 July 2021. She says giving evidence was terrifying. She was worried about how everyone would react,

and concerned about retribution although I would think fear of that is more to do with the defendant's partner. She describes having suffered depression from the age of about 11, with this incident exacerbating that condition. She is currently prescribed anti-depressants and has been taking those for about the last 7 months. She has noticed behavioural changes for the worse. She said that after this incident she hardly left the house for about a year and contemplated killing herself. When she did leave she had panic attacks. Complete strangers approached her in the street and asked her about what had happened and made rude comments to her. She is concerned that so many people know about what happened that her reputation has been destroyed. She is concerned about her employment prospects. Generally, she has lost drive and enjoyment in life. She is withdrawn and resists offers of help. She was in year 10 in 2018 and stopped going to school. She tried again the next year but suffered panic attacks and could not return. It is three years since she had been to school and she would like to get her life back on track. She has a boyfriend but struggles with sexual feelings as she is constantly reminded of what happened. She is receiving counselling and feels that this is helping.

The defendant is now 47 years old; 45 at the time. He has a record of offending in this State starting in 1990. The early part contains dishonesty offences with driving offences extending to alcohol and drug related matters, later being predominant. He also has some convictions in South Australia from 2002 to 2008 for offending mostly of the same types. There is generally no record of anything of any direct relevance to this matter, and he has not been sentenced to a term of imprisonment. The defendant had a difficult childhood. His father was prone to frequent physical abuse of him. He left home when he was 13 years old and was homeless for a time. He met his present and long term partner when he was about 18. The first of their six children was born in 1993. Shortly after being interviewed on this matter the defendant and his family moved to Melbourne. One of the younger children has a medical condition and seems to require a high level of specialist care. The move to Melbourne was to be closer to the available treatment. The particular doctor then moved to Queensland and the family followed. The defendant is a carer and receives a disability support pension. He was extradited from Queensland, and was bailed in this State on 14 June 2019. He has been living in Queensland since then. He was on stringent bail conditions, including reporting conditions. He is to be given some credit for his compliance with his bail and returning voluntarily to face trial. I was told that he has found the whole process incredibly stressful and has sought medical assistance. I was told of two suicide attempts. I was also told that he has stopped all supply and sales activities relating to illicit substances, and has generally lessened his use. There have been serious ramifications in his relationship. He has been assaulted by his partner and is presently protected from violence on her part by a restraining order, although the family unit is still together. I note that he spent about four days in custody in the extradition process before being bailed.

This is a bad case of this type of crime. First, Jane was nearly 16 – a little over 12 months younger than the age of consent – and there is the significant age disparity. Next, the law exists to protect young people not only from older people but from themselves as well. That much harm can be caused by poor or ill-considered, and immature decisions made about sexual activity by young persons not adequately equipped to make them, is highlighted by this case. The fact remains that Jane was not quite sixteen years old, and additionally vulnerable. She was vulnerable not only because of her age but because of the situation in which she had put herself by her continued use of cannabis, an illicit substance. This issue had led to an argument with her mother outside their house which had been seen by the defendant. Further, the defendant persisted in his expressions of sexual interest and asking for sexual favours of her in exchange for cannabis. Attempts to placate or dissuade by way of explicit images or the

promise of them, were not successful. The sexual acts were not claimed as non-consensual but the defendant took advantage of the situation, and pressure was brought to bear. Of course, the defendant is not charged with, and is not to be punished for, supplying cannabis but it puts the relationship in context. Lastly, although the defendant was not, of course, directly responsible, the revelation to the defendant's partner of the sexual activity led to Jane being assaulted. General deterrence and denunciation are prominent factors in the sentencing process although I recognise that the two counts make up the one incident.

Mr Airey, I have set out the facts, your personal circumstances and what I see to be the relevant factors. I repeat that this is a serious case of this type of crime. You were supplying an illicit drug and suggested sex for the cannabis when the complainant was indebted to you, and persisted with that until you achieved what you wanted. You ought to have been aware of her young age but you did not trouble yourself about it. This was predatory conduct and must be condemned. Notwithstanding the things that do operate in your favour, immediate imprisonment is called for. You are convicted and sentenced to 9 months' imprisonment to commence on 10 July 2021. I must make an order under the *Community Protection (Offender Reporting) Act* unless I am satisfied that you do not pose a risk of committing a reportable offence in the future. On the facts, I cannot be so satisfied. I order that your name be placed on the register and that you comply with the reporting obligations for a period of 5 years. For your benefit I note that s 19 of that Act enables you to leave the State after your release on giving notice to the Registrar, and providing certain details.