

STATE OF TASMANIA v DC
COMMENTS ON PASSING SENTENCE

28 JULY 2021
MARTIN AJ

DC you have been convicted by a jury of indecent assault and I am required to sentence you in accordance with the verdict of the jury, and in accordance with a view of the facts that I find proved beyond reasonable doubt. This is a view consistent with a verdict of the jury.

At first blush it might appear that the verdicts are somewhat at odds with the way the trial was conducted but, as I said to counsel, the jury may well have had a doubt about the question of penetration of the vagina by your finger, in which event their verdict will be not guilty because there was no alternative left to them.

The jury has found you guilty of count 2 being the first charge of indecent assault which means they were satisfied that the complainant was telling the truth when she said that you put your arm around her and your hand went up under her T-shirt and onto her breast over her bra, and I am satisfied you, in addition to that, told her that she had a nice pair.

I see you sitting there shaking your head. I can understand you shaking your head because you have told, through counsel, the jury that nothing happened. Well the jury were satisfied that something did happen and that it was a sexual offence and your response simply demonstrates that you are, in one sense, in a state of denial and you are not prepared to accept responsibility for what you did.

The jury found you not guilty of the third count, that was the second charge of indecent assault which was, on the evidence, according to the evidence of the complainant a brushing with touching, I should say of the breast, and the jury obviously had a doubt about whether that occurred or that if it did whether it might have been accidental.

So I am to sentence you for one crime of indecent assault by way of touching the complainant's breast.

The offending occurred when she visited you in a hospital or rehabilitation room. She sat down on the bed to talk to you and you took advantage of her by way of an opportunistic crime.

The jury found you not guilty of penetration of the complainant's vagina, but I am satisfied that you placed your hands on her or a hand on her with a sexual intent, and it seems to me highly likely that your hand went to the area of her vagina, but you were not convicted of that offence and I am not to sentence you on the basis of any offence involving her vagina; but I make it clear to you that I am satisfied that in an opportunistic way you placed your hands there with sexual intent.

At the time of your offending you were 75. The complainant was 19. You had been a very, very close friend of the family and she trusted you. As she said in evidence and in her victim impact statement, you had seen her grow up from a young six year old and she loved going to see you. As she has explained in her victim impact statement, you took on the grandfather type figure because she had lost her biological grandparents. Your wife took on a grandmother role. You also had the label of uncle.

And so, as the prosecutor said, there was an overall family dynamic and you were part of the family in the broad sense and trusted and loved by the complainant. What you did to her was

a gross breach of that trust and it was a highly traumatic experience for her. It is, unfortunately, quite common for close friends of families to breach that type of trust and commit sexual offences against people who are vulnerable to this type of opportunistic offending, and the complainant was certainly vulnerable.

Your conduct has had a severe impact and the impacts upon the complainant are ongoing. Again, unfortunately, this is not uncommon. We have learnt in recent years in the courts and the community of the longstanding effects of these types of crimes.

Every sexual assault upon a young person like the complainant is a serious crime. That observation is the starting point. You committed a serious crime. However, like all crimes, there is a range of seriousness of sexual assaults. Your crime is very much at the lower end of that scale of seriousness but I repeat, notwithstanding that it's at the lower end of the scale of seriousness, it remains a serious crime with devastating effects.

You are now 78 and before this you had led a good life, an industrious life. Married with three children. You have been married for many years. Regrettably your wife is now suffering from stage four Parkinson's disease and has significant mobility issues.

Unfortunately, also, you are in exceptionally poor health. Haemochromatosis, hypertension, heart failure, emphysema, pancreatitis and mild dementia are the main features of your ill health, and that ill health has been obvious during the course of the trial. It leaves the Court in a very difficult position in arriving at an appropriate sentence.

As I said, sentencing in these circumstances poses a particularly difficult task for the court. On the one hand it's the serious offending albeit at the very much the lower end of the scale of seriousness. There is a need to recognise that this type of offending is far too common within our community, and a need to deter others from offending like this. In your case I am satisfied that there is no risk of future offending of this type.

As I said in discussion with counsel, community service or community correction orders are not applicable in your case because of your health. Similarly home detention does not fit appropriately. Your offending, given your prior good record and your state of health, does not merit a sentence of imprisonment. In those circumstances I have reached the view that a fine is the only appropriate sentence.

DC you are convicted and I impose of fine of \$3,000. I need to add this, that if you had been a suitable candidate, I would probably have ordered some form of home detention or community service order, but as I have said for the reasons discussed, these are not appropriate in your particular instance, so I impose the fine of \$3,000.