

COMMENTS ON PASSING SENTENCE

ESTCOURT J

The complainant in this matter is currently aged almost 48 years. She was a high school student only days past her 14th birthday when the unlawful sexual acts committed on her by the defendant commenced. He was a school teacher at her school. He has pleaded guilty to one count of persistent sexual abuse of a child. He is currently aged 65 years. At the time of the unlawful sexual acts he was aged 31 years.

The complainant attended the school from 1986 to 1989. As a result of her pregnancy to the defendant she completed a year at the school by way of distance education.

The complainant gave birth to a baby which was adopted soon after.

The complainant had a troubled childhood. The defendant was a single man who was popular with his students. The complainant regarded the defendant as a male role model and somebody she could trust and confide in. She began walking home from school with him.

During the May/June school holidays of 1987, the complainant and a friend visited the defendant at his home. The complainant was 13 years old at the time of those visits. Subsequently the complainant began to visit the defendant on her own.

The complainant recalls prior to 26 September 1987 that there had been general intimacy with the defendant in the form of kissing and cuddling on the couch at the defendant's home.

She further recalls that the first episode of vaginal intercourse with the defendant occurred at the defendant's home on Grand Final day 1987.

The complainant recalls they began watching the football and then started kissing on the couch. The complainant had expected this to happen given the previous physical contact. However, the defendant then took the complainant by the hand and led her to his bedroom upstairs where they had unprotected vaginal sexual intercourse. This was the complainant's first experience of sexual intercourse.

Following the first episode of intercourse the complainant recalls that she would visit the defendant at least once a week. Vaginal intercourse took place on most of those occasions during the balance of 1987 and a similar pattern continued through 1988.

On a date between September 1988 and March 1989 the complainant recalls that she was menstruating and the defendant took her to his bedroom and sexual intercourse occurred. The complainant specifically recalls this episode because she was concerned about the consequences of sexual intercourse while menstruating.

Around March or April 1989 there was an episode of sexual intercourse which led to the complainant falling pregnant, and subsequently giving birth, as already noted.

By mid-1989 the complainant was 15 years old. She advised the defendant that she had not menstruated for a few months.

The complainant's pregnancy became more visible and she could no longer fit into her clothes. The defendant then confided in his sister that the complainant was pregnant and he was the father. The complainant called a friend who was also present when the defendant told his sister.

The complainant also recalls the defendant calling her father and requesting that he attend the defendant's home. The defendant then told the complainant's father about the pregnancy of his daughter and that he was the father. During the discussion that followed, the complainant's father told the defendant and the complainant that any relationship between them was over.

The complainant recalls that the last occasion of vaginal intercourse with the defendant occurred at the defendant's residence in about September 1989 while she was pregnant.

The defendant and the complainant continued to keep in contact by letter. When the opportunity allowed they would meet in person. The complainant recalled going shopping with the defendant and using the excuse that she was doing shopping for her grandmother.

The defendant and the complainant continued to communicate by letter for approximately 5 weeks into term 3 of the complainant's last year at the school, while the defendant remained employed at the school. In the letters the defendant continued to display affection for the complainant and suggested they had a future together including marriage.

The complainant attended a pregnancy support service in early September 1989 with her cousin and father. Her father also attended Community welfare with the complainant, in relation to the adoption process.

The defendant agreed to pay for any out of pocket expenses associated with the pregnancy. After the child's birth the defendant sent flowers to the complainant and gave her a necklace and earrings. Gifts I am told she that she retained. He also attended the hospital after waiting until after the complainant's family members had left.

The birth certificate recorded the defendant as the father of the complainant's child and his occupation as Teacher. The child's whereabouts are presently unknown to the complainant.

The complainant attended a new school in 1990. She ceased the relationship around the same time. After initially visiting her one lunchtime at her new school the defendant sent the complainant a birthday card in 1990, a Christmas card in 1990 and a birthday card in 1991.

The last contact the complainant had with the defendant was when he rang her by telephone to enquire after her welfare and to tell her he was engaged to be married. The complainant's best estimate of the timing of this call is that it occurred within 3 years of the birth of her child.

The complainant has read a victim impact statement to the court over video link. I am conscious of the way such a statement should be approached, see for example *DPP v M* [2005] TASSC 14. However nothing in the statement seeks to aver further criminal behaviour and I see nothing stated by the complainant as reflecting anything other than that which one might expect would be the devastating impact of the defendant's odious crime on this young girl and its profound and life changing effects upon her.

I sense no exaggeration by the complainant, who was unwittingly drawn into these proceedings by a newspaper report which led to the police approaching her over 30 years after the events she had concealed all her adult life. As my colleague, Wood J said in a not dissimilar case to the present:

"[The complainant] feels guilt and shame as well as responsibility for the effect upon her family. It is well known that such feelings of guilt and shame are typically felt by victims of this sort of crime, *Crowley v R* [2003] TASSC 147, per Evans J, at paragraph 22"

The complainant said in her victim impact statement:

"The police interview was harrowing. It was the first time I had detailed the abuse. As I verbalised each traumatic memory, the pain of it all came flooding back to the surface; my mother's death from cancer, my father becoming emotionally distanced, my stepmother from hell and then [the defendant] and then the baby; as it turns out, the only baby that I would have in my life ever...

After that police interview, it was like I spiralled into a state of shock and I had to take a week off work; I was unable to sleep, unable to eat and it felt like I was unable to think. The emotions, stress and trauma of the police interview and dredging up the abuse memories, was too much for me to handle emotionally and mentally. I felt that same sense of dread and aloneness that I had during the abuse years."

She further said:

"In the last year I have had regular sessions with the Department of Justice trauma counsellor I met at the police interview to help me cope. I'm so tired of feeling this way. The unwanted memories won't leave me in peace; thinking about how [the defendant] gained my trust, remembering how trapped I felt and how I didn't know how to help myself, thinking about how naïve and innocent and broken I was, and thinking about how the start of the sexual abuse marks the start of my life that I had to build on deception and lies. Although I wear my mask well, I'm a wreck; I am so edgy at work and find it hard to focus and function. Little things feel like big things and I feel overwhelmed. My colleagues and many friends don't know that I'm the victim in the paper and I don't want that to change; I don't want to be looked at differently, or have to explain myself. I deserve the freedom of people not knowing what I've been through."

The complainant went on in her statement to say:

"... I gave birth to a child that I was never given the opportunity to know. I will never forget the sterile hospital room and how numb and detached I became; it was the only way I could cope with the enormity of what was happening to me. As an adult now, I can't believe that the [defendant] came to the hospital, the hospital staff and then the adoption agency staff all facilitated his presence. Over and over and over again, I got the same message that I was worthless, that everyone was fine with what he was doing to me.

On the [anniversary of my child's birth] every single year, I get out the one little photo I have of my baby and I vividly relive it all; the trauma of going to the hospital and giving birth, the physical and emotional pain; of staying in hospital alone, of the baby being taken by the Department and me leaving the hospital empty-armed as if nothing had happened. There was no counselling or support, life had to move forward; don't talk about it, don't think about it, don't look back. I will live with endless questions in my head for the rest of my life; How is my [my child]? Where is [my child]? Has [my child] had a good life? Who has [my child] become?"

The complainant concluded by saying:

"I feel sad and guilty knowing that it's not only me who has suffered, but also my family – particularly my younger sister who was also teased and bullied about it at school and who has lived with misplaced guilt for her inability to stop [the defendant] from doing what he was doing to me. I know it has had a lasting effect on my sister in both her personal life and professional career.

As I write this, I have no idea how the outcome of the court and justice process will affect my future. Hopefully, I can start to feel free of the shame and embarrassment I have felt for over 30 years; it is time for me to heal, the story of my past has now been told. The distress and trauma of living with what has happened to me will always be part of my life, but I can move forward knowing the seriousness of the abuse has finally been acknowledged."

Having ordered a transcript of the sentencing hearing I have read and considered all that which was said on the defendant's behalf by his counsel. Apart from his plea of guilty, which is acknowledged as an early plea and for which he is entitled to a genuine discount on an otherwise appropriate sentence of imprisonment, and apart from his co-operation with Tasmania Police, there are no significant mitigating circumstances in this case.

I note that the defendant conveyed at a very early stage that he intended to plead guilty in order to ameliorate the stress and concern that might otherwise have been caused to the complainant if she was left in a state of uncertainty that she might be required to give evidence at a trial.

It is submitted by the defendant's counsel that "carries great weight", because "[i]t's not a bowing to the inevitable" but "an acknowledgement of moral responsibility". That is not disputed by the State but I observe that proof of the crime would not have been difficult in my view. I also note that I am told that the defendant was "genuinely profoundly affected" by the complainant's victim impact statement "having no understanding of that impact" and that "he was profoundly saddened by the consequences of their connection back in 1987". I take that as an expression of remorse.

Before me, the defendant's achievements were enumerated, from his football umpiring to his encouraging participation by school groups in his chosen sports of tennis and golf; and to his high level achievements as a school teacher at various schools post 1989, culminating in holding the position of a Vice Principal before these events came to light in 2020.

His good character and achievements are supported by references which I have read and considered. I understand that he has helped shape the lives of thousands of young people, appropriately, diligently, and without any suggestion of any impropriety at any stage throughout his career after 1989.

However, apart from going to a lack of any suggestion of subsequent similar offending, these are not matters that weigh heavily with me. The more relevant character consideration in this case, is that of the defendant's character up to and between 1987 to 1989, when, at the beginning of that period, as a teacher of 9 years' experience and at the mature age of 31 years old, he was prepared to violate his care and supervision of, and his authority over, a 13 to 16 year old girl.

The defendant's health has been described to me. There is nothing that could cause a modified sentence to be considered.

It was submitted to me that the defendant had a genuine affection and love for the complainant. His counsel said, "it wasn't a circumstance of a man looking to predatorily gain the advantage of a young person and exploit them and leave them. The defendant's emotions were genuine and real, even if they were wrong."

I take that to be a dubious proposition despite correspondence I have seen, but even to treat it as wholly true it is not mitigating in my view. It merely marks the absence of an aggravating feature.

The object of the legislation creating this crime is clear and well known. The legislation is designed to protect young people who because of their age and/or circumstances lack the maturity to make proper decisions for their own welfare. It is to protect children who are likely to be too emotionally immature to make judgments about their sexual relationships. In particular, under the Sentencing Act, it is an aggravating feature of this crime when, as here, the victim of it was under the care, supervision or authority of the perpetrator.

Mr PCM – On the basis of a number of considerations I hold this to be a serious case of its kind:

- It involved a grave breach of trust. You held a position of trust as a teacher of the school where the complainant attended and you chose to initiate a sexual relationship betraying that trust. She regarded you as a male role model and somebody she could trust and confide in. In doing what you did, you used her actual trust and confidence in you to groom her, starting with walking home with her, then visits to your house, then kissing and cuddling and finally sexual intercourse.
- The substantial age difference between you is another aspect of the conduct that should have, if indeed it did not, make you appreciate that there was a power imbalance between you that rendered your conduct egregious.
- The repetition of the acts of sexual intercourse over a period of two years and the unprotected nature of that intercourse, resulting, predictably in the complainant's pregnancy was heinous.
- And the devastating effect of your conduct on the complainant as outlined in her victim impact statement is of course relevance to sentencing. Her life was ruined.

Despite the age of this matter, a not uncommon feature with crimes such as this, your sentence must reflect the serious nature of the offending. It must be arrived at in accordance with today's sentencing patterns and while personal deterrence is not in my view a prominent feature in this case, any sentence must condemn your conduct to the community, vindicate the complainant and be effective as a deterrent to others.

The offence is a reportable offence under the legislation that applies in this State and I am required to place your name on the register of those required to report under the Act unless I am satisfied that you will not commit a reportable offence again. Having regard to your age, the time since the offending and your subsequent good character, I am satisfied it is unlikely that you will commit a reportable offence again. I decline in the circumstances to make an order under the Act.

You are sentenced to four years' imprisonment and you are not to be eligible for parole until you have served two years of that sentence. I record a conviction.