

The defendant Sean Patrick Mahoney has pleaded guilty to nine counts of indecency. On nine occasions he wilfully carried out an indecent act by exposing his penis and masturbating. He did this in a public place and in public view. The individual incidents are as follows.

Count 1, on 28 March 2020 he entered the reception area at the Moonah Dental Centre and asked to use the toilets. He entered the male toilet and masturbated with the door partially open while watching the reception area in the mirror where there were three young women working aged 16, 17 and 19. One of them aged 17 years saw what he was doing. She yelled at him to get out and he then left.

Count 2, on 4 September 2020 a woman was walking through Wellington Court toward the ground floor of the Argyle Street carpark. She glanced in the direction of the male public toilets and she saw the accused inside the toilet area with his trousers undone, masturbating. He looked at her and winked. She walked up the car park stairs towards her car. The defendant followed her, up two flights of stairs. She ran to the female showers on level one and locked herself in a cubicle.

Counts 3 and 4 concern the defendant's indecency at the Centrepont Shopping Centre on 7 September 2020. He was loitering in the foyer of the Centre in the area of a corridor near the entrance to Bidendopes Lane. The corridor is near the public toilets. A woman walked from the Centrepont carpark into the Centre, near the entrance to Bidendopes Lane. The defendant was standing with his back to her, looking over his shoulder in her direction. He jumped so that he was facing the complainant, he had his trousers undone and was masturbating. She stopped because she was frightened and then continued into the Shopping Centre. She walked past him expressing her shock and disgust with an expletive, the defendant followed her briefly and then returned to where he had been loitering.

Less than 10 minutes later, a young woman in her early 20's walked through the foyer area from the car park and saw the defendant next to a phone box. She glanced at him and smiled as he had looked at her, but then she realised he was masturbating and his penis was out of his trousers. He continued, staring at her. She walked past him and turned to see he was following her, he was still masturbating. Both women reported the matter to the police that day.

Later that same day a young girl, 13 years of age, was at St David's Park with her boyfriend. They walked towards the public toilets and she saw the defendant standing inside the second toilet cubicle. The girl went to go into the first cubicle and the defendant tried to enter it with her. She stepped back and moved to the other end of the toilet block. The defendant went into the first cubicle and kept the door open. He looked out towards her as he licked his hand, placed it inside his shorts and began masturbating. He continued for a few minutes while continuing to watch her. She was scared and sent a message to her boyfriend and went into his cubicle where she contacted her mother who advised them to go to the police. They went to the police with the young girl's mother that day to report the incident. The fact that the defendant performed this act of indecency in front of a child is an aggravating factor. Another aggravating factor is his conduct in following her and trying to enter the toilet cubicle with her.

The police attended early that evening and found the defendant in the toilets. He was interviewed by police and denied masturbating and said he was at the toilets waiting for someone. He denied being the person masturbating in Centrepont. He was charged and bailed.

On 10 September 2020 at about 9:15 am the defendant was present at Woolworths Supermarket in New Town. He walked around the store in an erratic fashion. He was pacing backwards and forwards and made eye contact with a female customer. He had his pants down, his underwear was exposed and he motioned above his penis apparently drawing attention to it.

The defendant removed personal lubricant from a shelf and put it in his trouser pocket. He approached the checkout where a female complainant was working attending a female customer. As he approached the register he put his hand inside his pants and pulled his penis out over the top of his pants and began masturbating. The customer said something and he left the store. He was seen by another female customer with his jeans lowered, masturbating. He continued while she walked past him.

During the morning of 10 September the defendant entered the St Vincent de Paul Store in Elizabeth Street, North Hobart. There was one staff member working there. She greeted him, noting that he appeared to be under the influence of drugs. He walked towards the back change rooms. She could tell there was something wrong and pressed her silent panic alarm. He stood within the change room with the door open facing outwards and started to masturbate, and walked out of the change room doing so. He approached her and stood close to her at the front counter while he continued. He said to her "look at it I just need you to look at it." He began walking around the shop. The complainant went out the back and locked herself in the staff area and called 000. CCTV footage shows him walking around the store masturbating for approximately six minutes until he ejaculated and left the store.

Police located him nearby. He participated in a video recorded interview but made no admissions with respect to his conduct at Centrepont or the St Vincent de Paul store. He was charged and remanded in custody and has been in custody since that date (10 September 2020).

The defendant's conduct was disgusting and alarming. It was directed towards individual women, and in one case towards a child, and his fixed attention upon them was very disturbing. His conduct was determined and undeterred by their responses of shock and revulsion. His actions in following some of the complainants were sinister, causing them to fear imminent sexual violence. It is important to understand that to inflict that kind of terror and trauma, is, in itself, a very serious form of harm. It seems from some of the victim impact statements that unfortunately it has been the experience of some of the complainants that that harm is not always well understood in the community.

However, it is understood by the courts. It is a great wrong to inflict terror and trauma on another person particularly if they are vulnerable or disempowered in the situation. Added to that harm is the very likely potential for debilitating long term consequences.

It is plain from the victim impact statements provided by five complainants that they all found the defendant's behaviour frightening, menacing and disturbing. Their confidence and sense of safety has been completely undermined. They have all suffered a degree of ongoing adverse emotional harm and distress and, or psychological consequences, as well as disruption to their lives.

The defendant is 31 years of age. He has a lengthy history of prior convictions including relevant matters. He has two convictions in 2018 for prohibited behaviour involving like conduct. One involved masturbating in the office of a member of parliament in her presence. That offence together with other offences attracted a global sentence of imprisonment. The other offence of prohibited conduct attracted a sentence of two months' imprisonment wholly suspended for a period. Other prior convictions reflect drug use and an unstable lifestyle, such as minor dishonesty offences, destroy property, drug and driving related offences. There are a significant number of prior convictions for common assault, assault police officer and assault public officer. There are a total of 8 offences from 2009 to 2020, 7 of which were committed in the last 5 years.

It can be seen from his prior convictions that after the first act of indecency occurring on 28 March there was a period of time in custody and his period of offending spanning a week in September was committed soon after his release from prison.

In July 2020, a suspended sentence of six months' imprisonment was imposed subject to a condition that he not reoffend for two years. The crimes of indecency committed in September breached that condition. There have been breach proceedings in the magistrates court, and that suspended term has been activated and backdated to 10 September 2020.

After the defendant was remanded in custody, he was transferred to the Wilfred Lopes Centre because of his mental state. He was diagnosed with a serious psychiatric condition, schizoaffective disorder. This is a combination of schizophrenia and mood disorder. His symptoms included paranoid ideation, elevation of mood and significant thought disorder. He was prescribed an antipsychotic and mood stabiliser. Initially, he was assessed by Dr Jordan who provided a report to the defence in February 2021 opining that he was not fit to stand trial. He gradually improved under treatment and after four months at the Wilfred Lopes Centre was returned to the general prison population.

I have been provided with a report from Dr Jordan dated 28 June 2021. It is Dr Jordan's opinion that Mr Mahoney has likely been suffering from schizoaffective disorder with periods of mood disorder for an extended period. Notably there has been an escalation in his offending since 2016 which supports a worsening of his condition. Dr Jordan considers that other prior offending such as assault and property damage may have coincided with peaks of agitation driven by his disorder.

The defendant has no recall of his offending. Consequently, Dr Jordan was not able to draw a direct nexus between his offending and his serious mental disorder. However, it was Dr Jordan's opinion that it is likely that mental disorder played a role in his conduct. It can be said that at the time of these crimes the defendant was suffering from his disorder, and, it was untreated and undiagnosed at that time. Furthermore, elevation in mood and sexual disinhibition are not uncommon in cases of mood disorder.

At the time of the offending in September 2021 the defendant was engaging in illicit drug use which may have been a contributing factor and observations of the defendant on at least one of the dates, the 10 September, were that he may have intoxicated by a substance whether it be alcohol or drugs.

The defendant now receives mandated treatment under a treatment order pursuant to the *Mental Health Act* and has been receiving that treatment since April 2021, with the order periodically

reviewed and extended. The defendant has been compliant with the treatment and recognises the benefit of it. It is his intention to continue with that treatment whether it is mandated or not.

Mr Mahoney has suffered for some years from mental health symptoms which include lack of impulse control, reduced cognition and impaired memory. He believed these were attributable to head injuries he had received, first when he was involved in a serious car accident in 2013 and second in 2014 when he was the victim of a serious assault. In 2015 he was diagnosed with an acquired brain injury, major depressive disorder and post-traumatic stress disorder. He now understands the nature of his condition and the need for treatment. He can see a drastic improvement in his mental condition as a result of the treatment he has been receiving.

Once the defendant's condition improved, and he was fit to plead, he promptly entered pleas of guilty. I accept that now he is remorseful for the impact of his actions upon the victims.

At the time of offending he was receiving a disability support pension as a result of an acquired brain injury he had sustained as a result of the motor vehicle accident. He had been experiencing homelessness since a period of imprisonment imposed in 2016.

On his release from imprisonment he will have the support of his mother and her cousin Mr Crossin, who is a father figure to the defendant.

The defendant has now spent a lengthy period of time in custody as a result of his offending. Fortunately, in this period he has received appropriate treatment for his mental disorder. It is vital that there be continuing treatment to avoid a deterioration in his condition and an associated risk of reoffending. Dr Jordan states in his report of 28 June 2021 that "the success of future psychiatric treatment will determine whether there is further criminal recidivism on Mr Mahoney's part." It is strongly recommended that beyond the terms of any period in custody, that there be mandated treatment and monitoring by a mental health team.

I also have a report from Dr Anthony Fernando, consultant forensic psychiatrist dated 6 September 2021 who expresses his opinion with respect to the appropriate diagnosis that it is more likely that the defendant suffered from mental and behavioural disorders due to multiple drug use - psychotic disorder. In any event, he agrees with the medication regime that is in place, and importantly, he agrees with the recommendations of Dr Jordan. In his opinion too, the defendant continues to need consistent treatment with psychiatric medications. Because of the defendant's general lack of insight it is considered appropriate for him to receive psychiatric treatment under the legal safeguards of a treatment order under the *Mental Health Act 2013*. Dr Fernando also considers that the defendant would benefit by engaging with a substance misuse service to support him to abstain from all non-prescribed psychoactive substances. He assesses that the defendant would be a low risk of sexual offending providing that his mental illness is adequately treated and he is abstinent from psychoactive substances.

I have a report from community corrections dated 13 September 2021. The defendant is not recommended for home detention and is unsuitable for community service due to the nature of his offending. He is assessed as requiring a very high level of supervision from community corrections service and special conditions are recommended to reflect the recommendations of Dr Fernando. I will incorporate these recommendations within the court orders I impose today.

This is serious offending that has caused, as I have explained, significant alarm and harm to the individuals exposed to your obscene behaviour. A lengthy gaol sentence is warranted to be an effective deterrent to you and other people. The provision of treatment for your serious mental condition and your cooperation with that treatment is not only strongly in your interests but also the interests of the community. I note that you have been cooperative with that treatment and you are motivated to continue to comply, and it is your genuine intention that you will comply and cooperate with that treatment, and that is a most positive factor in your favour. Indeed, the order I will make is designed to promote and encourage your compliance with that continuing treatment and to reflect the recommendations of Dr Fernando, Dr Jordan and also community corrections,

I record convictions on each count. I impose a global penalty of 14 months' imprisonment, which is backdated and to commence at the conclusion of the activated term of six months' imprisonment commencing on 10 September 2020. The balance from 22 September 2021, is suspended. It is suspended on conditions that you must not commit an offence that could attract a term of imprisonment for a period of two years from the date of your release, and you must comply with a community correction order for a period of two years.

As conditions of that community correction order you must not commit an offence punishable by imprisonment for two years. The core conditions of that community correction order are imposed including that you must report to a probation officer at Highfield House, 114 Bathurst Street, Hobart within 24 hours of your release from prison. You must comply with all the reasonable and lawful directions of a probation officer. I impose the additional following special conditions which must apply during the period of two years:

- You must submit to the supervision of a probation officer as required by the probation officer.
- You must submit to medical, psychological, psychiatric assessment, treatment and counselling as directed by a probation officer.
- You must comply with directions made with regard to illicit substance abuse as directed by a probation officer, including assessment, treatment, counselling and attendance at and completion of a drug rehabilitation program if directed.
- You must comply with directions referring you to alcohol and drug services. You must comply with directions in relation to abstinence from drugs and drug testing.
- You must attend educational, vocational and other programs as directed by a probation officer.

I make an order pursuant to the *Community Protection Offender Reporting Act* that the Registrar cause your name to be placed on the register and you are to comply with the reporting obligations under the Act for a period of seven years from today.