

R, you have been found guilty by a jury on a charge of persistent sexual abuse of a child. The child is your daughter. You sexually abused her over a period of several months, beginning when she was 5 years old, and ending after she had turned 6. This is a particularly serious case of child sexual abuse because you routinely anally raped your daughter during that period.

At your trial the Crown prosecutor contended that the evidence established that you had committed unlawful sexual acts against your daughter on seven identifiable occasions. The majority verdict of the jury indicates only that at least 10 of them were each satisfied that you had committed unlawful sexual acts against your daughter on at least three identifiable occasions. For sentencing purposes, I need to make findings of fact as to the relevant occasions. The verdict of the jury indicates that they substantially accepted the truth and reliability of your daughter's evidence, and of corroborating evidence from other members of the household in relation to some particular occasions. However your counsel argued that the acts on specific occasions described by your daughter might have occurred on only five occasions, not seven.

At the trial, the seven occasions relied upon were given numbers by the prosecutor, but there is no suggestion that they were numbered in chronological order or any other order. Your counsel submitted that the acts relied upon in relation to occasions (i) and (v) might have occurred during some of the other identified occasions. I accept that submission in relation to occasion (v), but reject it in relation to occasion (i). I will give my reasons for those conclusions when discussing the individual occasions.

I am satisfied beyond reasonable doubt that the acts of indecent assault and anal rape described by your daughter in relation to the numbered occasions all took place. I say that on the basis of her evidence, and of the corroborative evidence from her mother and her half-brother.

On occasion (i), your daughter was asleep in her bed. You entered her bedroom, touched her on the vagina with your hand, touched her on her bottom, and scratched her with your fingernails, causing some bleeding. There was no suggestion that you scratched her with your fingernails on any other occasion. I think she would have included that information if she had been giving a separate description of the same occasion because scratching with your fingernails was something unique. I am therefore satisfied beyond reasonable doubt that the events described occurred on an occasion separate from each of the other described occasions. You committed the crime of indecent assault on this occasion.

On occasion (ii), your daughter was asleep in her bed at night, wearing pink pyjamas. You entered her bedroom, woke her, took off her pants, took off your own pants, got into bed with her, grabbed her around the vagina with your hand, and then inserted your penis into her anus. On that occasion you committed the crimes of indecent assault and rape.

On occasion (iii), your daughter was asleep in her bed at night. You entered her room, woke her, and carried her into the bedroom that you shared with her mother, who was not home. There you touched her vagina with your hands, and then inserted your penis into her anus. On this occasion you committed the crimes of indecent assault and rape.

On occasion (iv), your daughter was in her bed at night. You got into the bed and rubbed your penis against the outside of her vagina. During her cross-examination she also disclosed that

you had anal intercourse with her on this occasion. The crimes that you committed on this occasion were indecent assault and rape. At some stage during this episode your step-son entered the room and saw you on the bed with your shirt off and your trousers on. He had entered uninvited because he suspected that you were sexually abusing his half-sister, and wanted to establish what was going on.

On occasion (v), you took your daughter into your bedroom, opened her legs, put your mouth on her vagina, and licked around her vagina. When cross-examined about this occasion, your daughter said that this occurred at a time when you did other things as well. I am therefore not satisfied beyond reasonable doubt that this conduct, which amounted to an indecent assault, occurred separately from any of the other six occasions. For sentencing purposes, that does not make a significant difference.

On occasion (vi), you and your daughter were in the lounge room watching a movie. Your step-son was present. Other children might also have been present. You sat with your daughter, put a blanket over both of you, pulled down her pants, and touched and squeezed her vagina with your hand. That amounted to an indecent assault.

On occasion (vii), your daughter was in her bed at night under a blanket. You entered the room naked, and lay down on top of her. That amounted to an indecent assault because you indirectly applied force to her body, and you were naked. The child's mother entered the room and became very upset, whereupon you left the room.

These were not isolated acts. The acts of anal intercourse were painful for your daughter, and caused her to bleed from the anus when she went to the toilet. In her first police video statement, when she was 6 years old, she said that there had "been bleeding heaps of times". In her second police video statement, when she was 10 years old, she said that the sexual abuse would occur "mostly every night".

The child's mother left you after the occasion when she found you on your daughter's bed. She removed your daughter and the children from your care about a month later. On the basis of evidence from your step-son, I am satisfied that your daughter routinely slept with you during that period, or at least a substantial part of it.

This is an unusually dreadful case of child sexual abuse, involving many aggravating circumstances.

First of all, your victim was very young and therefore very vulnerable. As I have said, she was 5 years old when this sexual abuse started and 6 years old when it finished.

Secondly, the victim of your crimes was your daughter. Your crimes were incestuous.

Thirdly, your sexual crimes were unusually grave. You repeatedly anally raped your daughter. She was too young to consent to anything you did, and too young to understand the significance of your conduct. Your acts of anal rape caused pain and bleeding.

Fourthly, you groomed and manipulated your daughter. You repeatedly showed her videos of couples engaging in sexual acts, no doubt for the purpose of creating an impression that your sexual activities were quite normal. Also, you told your daughter that you would hurt her if she told anyone about what you were doing.

Fifthly, your sexual crimes involved extreme breaches of the trust placed in you by both your daughter and your wife.

Sixthly, the indecent assault in the lounge room on occasion (vi) was committed in the presence of one or more other family members.

Finally, and very significantly, there is the impact of your offending on your daughter and on other family members.

I was provided with a brief victim impact statement relating to your daughter. She is troubled by intrusive recollections, bad dreams, and anxiety about her safety. Because of what she has been through, there is a strong chance that she will encounter psychological difficulties to a far greater extent than she has to date. She is at risk of developing long-lasting psychological symptoms which could trouble her all her life, and could be extremely incapacitating. Victims of sustained child sexual abuse often have all sorts of difficulties, including difficulties in forming and sustaining close and trusting relationships. Your daughter's mental health is at risk, and will be for a very long time, possibly all her life.

Your offending has had adverse impacts on other members of your household. Your wife now has sole responsibility for looking after your daughter and managing whatever psychological difficulties she might encounter. Your step-son, who was only in grade 6, found himself in a situation where he felt obliged to investigate what you were doing and report to his mother. Your other children have been deprived of their relationships with you as their father.

A lot of common mitigating features are absent in your case. The crimes on which the verdict was based were not isolated crimes, but part of an ongoing series of crimes. There is no suggestion that you decided to stop offending before your daughter was removed from your household. You are not a youthful offender. You have shown no remorse. You have not made any significant admissions. You have not pleaded guilty. If you had pleaded guilty, I would have reduced your sentence by something like three years as a result of your daughter, her mother and her half-brother all being spared the ordeal of giving evidence before a jury.

You were in your mid-30s when this offending occurred and are now in your early 40s. To your credit, you have no significant convictions. I note however that you may have an alcohol problem. You have two drink driving convictions, and there is evidence suggesting that you had often had a lot to drink when you sexually abused your daughter. Your counsel told me that you have been suffering from depression, and have used alcohol as a coping mechanism in recent times.

There have been delays in bringing this case to trial, but I do not regard them as significant for sentencing purposes. You were charged with summary offences in relation to your misconduct in 2016, and failed to appear in court at one stage in 2017. As a result, a magistrate issued a warrant for your arrest. The police were slow to execute that warrant, but you could have surrendered yourself and did not. Further delays occurred as a result of your daughter being re-interviewed, the prosecuting authorities deciding to charge you under the *Criminal Code*, jury trials being suspended for several months during the early stages of the COVID pandemic, and your need to undergo surgery a couple of months ago.

I note that your medical problem had disabled you significantly, and that you were on a waiting list for surgery for some three years. You are still taking medication for pain relief.

I am required to impose a sentence only in respect of the unlawful sexual acts that you committed on the six or seven identified occasions that were relied upon by the Crown as the basis of the charge. However I will do so on the basis that they were not isolated occasions. As I said earlier, this is an unusually dreadful case of child sexual abuse. It calls for a long prison sentence, but I will make provision for parole because of your lack of significant prior convictions. The non-parole period will not be a short one. It will be the shortest possible period that I think justice requires you to spend in prison.

I convict you and sentence you to 13 years' imprisonment with effect from 19 November 2021. You will not be eligible for parole until you have served 8 years of this sentence. I order that the Registrar appointed under s 42 of the *Community Protection (Offender Reporting) Act 2005* place your name on the register under that Act and that you comply with the reporting obligations under that Act for 15 years after your release from prison.