

Mr McCallum, you have pleaded guilty to one count of possessing child exploitation material, contrary to s 130C of the *Criminal Code*, and one count of accessing child exploitation material, contrary to s 130D of the Code. I am also sentencing you for three summary offences contrary to the *Firearms Act*. The firearm offences were detected as a consequence of the search undertaken in respect to the child exploitation material offences.

On 6 January 2021 members of Tasmania Police and Australian Federal Police attended your residence, where you lived alone, in possession of a search warrant. This followed an investigation into the accessing of child exploitation material which had identified an IP address registered to the residential address that you lived at. Police executed the search warrant. It resulted in the seizure of four electronic devices: an Acer laptop computer which, at the time of police attendance, was in the process of downloading child exploitation material using a peer-to-peer network; two external storage devices – a Toshiba external hard drive connected to the television (Toshiba 1) and a second Toshiba external hard drive sitting on the television console (Toshiba 2), and a Hitachi drive located in your bedroom.

An examination of each of those electronic devices was undertaken and identified child exploitation material. The material was classified according to the Interpol Base Line categorisation system which categorises images according to their content and legal standing. This categorisation scheme is designed to provide an objective standard against which images can be classified in an endeavour to standardise the process of categorisation in a way which produces some degree of consistency in the assessment and determination of the objective seriousness of the offending. Category 1 of the Interpol Base Line categorisation system is the most serious. It depicts real prepubescent children under the age of 13 years where the child is involved in a sexual act, is witnessing a sexual act, or the material is focused or concentrated on the child's anal or genital region. Category 2 involves material that is not classified as base line but is still illegal and depicts children under 18 and involves images which might cause offence to a reasonable adult, but does not necessarily involve the child engaged in an overt sexual act. Category 3 depicts images that form part of a series of child exploitation material, but which is not, in its own right, illegal, although it may contain important clues or identify information in relation to Category 1 or 2 images. Category 4 does not involve any illegal material and is, for sentencing purposes, largely irrelevant.

The Acer laptop which, as noted, was in the process of downloading child exploitation material was found to contain a total of 13 images and 32 videos which were child exploitation material. Of that material, 13 images and 24 videos were Category 1. The remaining 8 videos were Category 2. There were a further 15 files on the Acer laptop which contained Category 3 files and a large number of Category 4 files which contained legal adult pornography.

The Toshiba 1 hard drive contained a total of 3 images and 128 videos which were child exploitation material. Of that material, 2 images and 59 videos were Category 1, and 1 image and 69 videos were Category 2. The remainder of the files on Toshiba 1 were classified as Category 3 or 4 files.

The files on the Toshiba 1 hard drive which contained the child exploitation material had all been saved into a single folder on the hard drive called "ZXCVB".

The Toshiba 2 hard drive contained 13 videos which were child exploitation material. Eleven of the 13 video files which were child exploitation material, had been saved into a folder titled "Very Best". Of that material, 4 videos were classified as Category 1 and 3 videos and 6 images were Category 2. There were a further 3 files on the Toshiba 2 hard drive which were Category 3, and a large number of legal adult pornography files were also found on the hard drive.

The Hitachi drive contained 10 videos which were child exploitation material. All 10 videos were located in the same file. All those videos were categorised as Category 2.

In total, across the four devices, 26 images and 179 videos were located which contained child exploitation material.

During the course of the search police also located some firearms and ammunition. A Lithgo .22 firearm was found resting in the corner of the kitchen pantry. It had a torch taped to the top of the barrel and was covered with a towel. The firearm was loaded. A box containing 30 x .22 cartridges was also found in the kitchen pantry. The defendant has never held a firearms licence and has pleaded guilty on complaint 3259/21 to one count of possessing a firearm when not the holder of a firearms licence, one count of possessing ammunition when not the holder of the appropriate firearms licence, and one count of failing to take all precautions to ensure the safekeeping of firearms and ammunition.

Following the search the defendant participated in a video record of interview. Under caution he admitted ownership of each of the devices. He told police he had used the Acer laptop to access and download pornography. He said the laptop was not password protected but that he lived alone, and no one else used the computer. The defendant said that during the course of downloading adult pornography, he had also downloaded some child exploitation material. He agreed he had saved the child exploitation material in different folders, and had definitely "sorted" one lot of files. He said he had a "natural curiosity" for child exploitation material and did not delete it but "kept on doing it" and became "trapped in it" and it got "worse and worse". The defendant told police he did not understand why he had downloaded the material and said he had "no excuses", was "completely guilty", and ashamed of himself.

The defendant originally told police he had been downloading child exploitation material for "years probably", before saying it had not been that long, and in fact would be less than 12 months. He told police he would look at child exploitation material once a week on average, and had last viewed the files on the Toshiba 1 hard drive two days earlier. The defendant told police that he considered child exploitation material to be "just like ordinary porn", and that he did not get any more satisfaction from child exploitation material than he did from adult pornography. He also said that he did not think there was "anything wrong" with watching the material in the privacy of his own home, although he also accepted that harm was caused to the children involved in the making of the material.

As to the firearm the defendant agreed it was his. He said he had taken possession of it following his brother's passing, and that it had sentimental value to him. He agreed he did not have a gun safe and that the firearm was usually kept in his bedroom or inside the kitchen. He agreed he did not have a firearms licence.

The defendant is now 75 years of age. He was 74 at the time of the offending. He has no relevant recorded criminal history in respect to child exploitation material. In cases such as this however, that does not carry considerable weight in the sentencing exercise. The defendant was

convicted in the magistrates court in 2011 of possessing ammunition when not the holder of the appropriate firearms licence and possessing a firearm when not the holder of a firearms licence of the appropriate category. Those charges were dealt with by way of fine.

I have had the benefit of detailed submissions from the defendant's counsel and have read and considered a psychological assessment report prepared by Dr Georgina O'Donnell in November 2021. I also have regard to the community corrections report dated 9 February 2022, which I sought. The defendant grew up in southern Tasmania in a close and supportive family. He continues to be close to his surviving siblings. The defendant has been gainfully employed since leaving school until retirement. He spent many years working as a technician for a telecommunications company. He has, I infer, a solid working knowledge of technology. The defendant is now in receipt of the age pension. When the defendant was approximately 9 years of age, he experienced a most traumatic event. He had befriended some older males who were working on a nearby rural property and living in a picker's hut. One day he went alone to the picker's hut, contrary to his mother's rules. One of the males attacked the defendant and tried to sexually assault him. The defendant tried to fight the man off, but he produced a knife and inflicted cuts to the defendant's hand, arm, chest and leg. He still has the scars of that attack. I am told the attack has had a profound effect upon the defendant, although I note the defendant has not sought psychological assistance for the incident and in fact has only told his general practitioner about it recently. The defendant says he developed a stutter after this incident and began consuming alcohol from a relatively early age because it assisted in relieving the stutter. The defendant says he has been depressed for the main of his life as a consequence of this event, although there does not appear to have been a formal diagnosis, and he is not medicated for it. It is put, however, that as a consequence of feeling depressed or bored, the defendant would download pornographic material. I am told that initially his consumption related to adult pornography, but his interest broadened to include the child exploitation materials I have referred to. It is suggested the child exploitation material was not the main focus of the defendant's pornographic interests, but I am satisfied his level of personal interest in the material was far from passing. He viewed it weekly, took the time to select some of the material and save it in specific folders, one of which was labelled "Very Best". It certainly could not be said, in my view, that the defendant's interest was just an idle curiosity.

I note in Dr O'Donnell's report she indicates the defendant is ashamed and embarrassed by his offending behaviour. She notes he is very worried about the risk of imprisonment, and has been experiencing some suicidal ideation due to the fear of imprisonment. She suggests that limbs 5 and 6 of the *Verdins'* principles may be enlivened. As I read her report she offers this opinion because of the defendant's age, his history of (undiagnosed) depression, his fear of imprisonment and current suicidal ideation. I find the reasoning which underpins her opinion as to the application of limbs 5 and 6 of *Verdins'*, difficult to accept. Whilst I accept the defendant may fear imprisonment, and the thought of the same may have a deleterious effect upon his mental health in the sense that he may feel anxious, nervous, fearful or sad, I can identify nothing in Dr O'Donnell's report that establishes with any cogency that the effect of imprisonment upon the defendant will be any greater than it would be for any other person facing the same predicament. In my view, it is not necessary to give weight to any of the *Verdins'* principles in this sentencing exercise. I note, appropriately, counsel for the defendant does not press that I should.

In sentencing the defendant I have regard to the principles articulated by Porter J in *Director of Public Prosecutions v Latham* [2009] TASSC 101, 19 Tas R 281, and referred to in *Taylor v The Queen* [2015] TASC 7. In respect to each of those matters I note the following:

- **The age of the children and the gravity of the activity portrayed in particular the degree of obvious physical harm or fear or distress in the victim**

I have had the misfortune of being obliged to look at samples of the images and videos tendered during the sentencing hearing. I do not intend to repeat in any detail what I observed. It is sufficient to say the images and videos depicted real children aged between approximately 6 to 10 years engaging in oral, vaginal and anal sex with adult males. Some of the sexual acts were reasonably lengthy. The acts were demeaning and humiliating for the child, and it was obvious in many of the sample videos, that the child was reticent to participate. In at least one video a young child is visibly distressed and crying in pain. The material can only be described as offensive and depraved.

- **The number of images or items of material**

A total of 26 images and 179 videos were located which contained child exploitation material. I acknowledge that this number is much less than that which is frequently encountered by courts sentencing for this type of offending.

- **Whether possession was for the purpose of further distribution; whether there will be any profit or benefit from the activity to the offender**

That is not alleged in this case. There is no evidence the criminal conduct involved the use of chat rooms or there was any past or intended distribution of the material

- **The level of personal interest in the material**

An assessment of such interest can be assisted by the manner in which any collection is organised. Here the defendant took the time to organise at least some of the material and save it into separate folders. The material was distributed across multiple devices. The defendant told police he had been downloading the material for approximately 12 months and watching it on a weekly basis. Indeed on the day of the search child exploitation material was being downloaded, suggesting the defendant's interest had not waned. Given all of this, I accept the State's submission that the defendant's interest in the material was high.

- **Whether the possession or distribution involves a risk of accidental discovery by innocent computer users**

I note that none of the devices were protected by a PIN code or password, and they were located in obvious places within the house. Nevertheless the defendant lived alone in a relatively remote area. In my view, the prospects of accidental discovery by another was very low.

In sentencing the defendant I have regard to the categorisation of the material generally, and particularly note the lower quantity of material involved. There is no suggestion of payment for any of the material or that possession was for any purpose other than personal use.

I also note, however, the contents of the pre-sentence report which suggests the defendant expressed "minimal remorse" for his behaviour, seeking to justify it on the basis that "I guess thousands of people do this". The author of the pre-sentence report noted, "During the interview process the accused had limited insight into his offending behaviour and the impact on the victims; as he engaged in comments of extreme minimisation of the offending and victim blaming. Of concern, the accused highlighted low motivation to address his identified criminogenic needs." The Community Corrections report indicates the defendant has been assessed as requiring a high level of supervision and would benefit from accessing an intervention targeted

to address specific needs related to the sexual nature of this offending. He is not suitable for a community service order.

The evils of accessing and possessing child exploitation material have been stated many times by the courts. The production of such material involves the exploitation and abuse of children somewhere in the world. The damage done to those children is undoubtedly profound and often immeasurable. Possession and viewing exacerbates and extends the abuse and exploitation of children. Accessing and possessing the material creates a demand for its production. Clearly general deterrence and denunciation are most important sentencing considerations. Behaviour such as the defendant's must be condemned by the courts and a very clear message sent to others who might be minded to engage in similar behaviour that it is simply unacceptable.

I take into account defendant's plea of guilty. It has a utilitarian benefit and facilitates the administration of justice. It is deserving of weight, and particularly so at present when the COVID-19 pandemic is still causing considerable disruption and delay within the courts. Beyond this, I am not satisfied the plea of guilty has value as being reflective of the type of genuine remorse courts look for in mitigation of penalty. Indeed, given the comments contained within the pre-sentence report, I am of the view defendant's insight into the gravity of his offending is somewhat lacking. I note the defendant has no prior convictions for this type of offending, but as I have said that carries little weight given the nature of the offending. I am conscious of the lower number of images and videos involved in this matter but because of the serious nature of the crime and the predominance that must be given to general deterrence and denunciation in the sentencing exercise, I am of the view that a period of imprisonment must be imposed for the child exploitation material offences. I think that period of imprisonment ought to be suspended given the personal circumstances of the defendant, and in the hope that with the benefit of some targeted intervention, the defendant will find the incentive not to re-offend. As to the firearm offences I will deal with those by way fine.

Mr McCallum you are convicted on all matters to which you have pleaded guilty. I make the following orders:

- 1 In respect to counts 1, 2 and 3 on complaint 3259/21, you are fined the sum of \$1,000, such sum to be payable within 28 days. Pursuant to s 194(1) of the *Firearms Act*, I order the items referred to in paragraph 23 of the State's statement of facts, and which are recorded on Tasmania Police Property Seizure Record receipt number 191358 as items 4, 5, 6 and 7, be forfeited to the State.
- 2 In respect to counts 1 and 2 on complaint 3258/21, I convict you and sentence you to five months' imprisonment. The whole of that sentence will be suspended on condition that you commit no offence punishable by imprisonment for a period of two years.
- 3 I also make a community corrections order for a period of 12 months. I impose the core conditions. Additionally there will be the following special condition:
 - (a) That you submit to the directions of a probation officer with respect to engagement with medical practitioners, including psychologists and psychiatrists.

This is a reportable offence under the *Community Protection (Offender Reporting) Act 2005*. Possession and accessing child exploitation material are Class 1 offences. I have regard to the

matters identified in s 10 of the Act. I am not satisfied that you do not pose a risk of committing a reportable offence within the meaning of that term in the *Community Protection (Offender Reporting) Act* in the future. I therefore make an order directing that the Registrar cause your name to be placed on the register, and that you comply with the reporting obligations under that Act for a period of four years from today's date.

I make a forfeiture order pursuant to s 130F(4) of the *Criminal Code* that the Acer laptop computer, Toshiba 1 hard drive, Toshiba 2 hard drive and Hitachi hard drive be forfeited to the State.

Mr McCallum you must understand that if you do commit an offence punishable by imprisonment you can be brought back to this Court and an application made that you serve the suspended term of imprisonment I have just imposed. The law is that a judge has to activate that sentence unless it is unjust to do so.