

Christopher Schmedding, you have pleaded guilty to one count of possessing child exploitation material contrary to s 130C of the *Criminal Code*. On 19 January 2020 when you were at work, your wife observed some pictures of young girls aged between 6 and 9 in suggestive poses with their legs apart on your mobile phone. These girls were not recognised by your wife. Later that same day your wife found a Toshiba hard drive in your work bag. Subsequent examination of that hard drive by a family member revealed further material of a similar nature. Police were called. They subsequently obtained and executed a search warrant at your residence. Police seized from your residence two electronic devices: a Dell computer tower and a Cooler Master computer. A second search warrant was obtained and executed at your work place. It resulted in two further electronic devices being seized: a mobile phone and an iPad. An examination of those electronic devices was undertaken. Child exploitation material was identified on the Toshiba hard drive, the Dell computer and the Cooler Master computer. The exploitation material was classified according to the ANVIL Scale which categorises images according to their content. It 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. The ANVIL Scale categorises images in the following manner:

- Category 1 – no sexual activity. The images must be sexually suggestive or sexual in nature.
- Category 2 – solo sexual act between children. Sexual acts between children only with no part of the body being penetrated and solo masturbation by a child.
- Category 3 – non-penetrative adult/child activity. Files in this category feature adults with a child involved in any sexual activity taking place however, the sexual activity is non-penetrative.
- Category 4 – penetrative sexual activity between children only or between adults and children.
- Category 5 – child subject to sadism, torture, bestiality or humiliation.
- Category 6 – animated or virtual images or videos.
- Category 7 – non-illegal material which may be suggestive of or identify information in relation to child exploitation material.

The Toshiba hard drive contained 3580 files of potential interest. Police categorised 1819 of those images. Of the images categorised, 429 images and 1 video were classified as child exploitation material. Of those 430 items, 424 were classified as category 1, 5 were classified as category 2 and one was classified as category 3. Approximately 3% of the files of interest on the Toshiba hard drive were classified as child exploitation material. On the assumption that the balance of the files contained a similar proportion of child exploitation material the State assert that a total of 844 child exploitation material files were contained on the Toshiba hard drive.

The Dell computer contained 3610 files of potential interest. Police categorised 1995 of those images and 452 of the images were categorised as child exploitation material. Of that number, 446 of the files were categorised as category 1, 5 were categorised as category 2 and 1 was categorised as category 3.

Approximately 22% of the files on the Dell computer were categorised as child exploitation material. Again, on the assumption that the balance of the files contained child exploitation material in similar proportions, the State assert that 818 child exploitation material files were on the Dell computer.

The Cooler Master computer contained 73 images that were categorised as child exploitation material. 72 of those images were category 1 and one image was category 2.

In total then, the State assert the defendant was in possession of 1735 child exploitation material files, the majority of which were categorised as category 1 files. There were also a number of category 7 files located. These files as I have noted are not illegal but depicted images of children dressed provocatively and posing provocatively. A small number of adult pornography images and videos were also located. Police also identified that a number of searches had been undertaken on the defendant's iPad seeking content similar to the category 7 images that had been located on the defendant's devices.

Following the police searches the defendant relocated interstate. He has not been interviewed. The defendant is now 57 years of age. He has no relevant recorded criminal history although I note in cases of this nature that does not carry considerable weight in the sentencing exercise. The defendant is not currently employed but fulfils a caring role for his aged parents who are 97 and 93 and have significant mobility issues and reduced cognitive capacity. He has a strong work history. He has been employed since leaving school until taking up the caring role for his parents.

When the defendant was approximately 15 years of age he was sexually abused by a man in his 30s. I was not given any details as to the extent of this abuse. Without diminishing its significance in any way, I gained the impression it was a single incident. The defendant has never disclosed this sexual abuse to anyone and has never received any assistance in respect to the impact it had upon him. It is submitted on the defendant's behalf that this event may explain why the defendant developed an interest in child exploitation material. Whatever the catalyst it seems the defendant has developed a considerable interest in such material. His counsel told the Court the offending has been occurring for approximately 10 years. It seems unlikely the defendant would have desisted from his offending any time in the near future but for his wife finding the images on his phone.

I note that as a consequence of the offending the defendant has lost his twenty year marriage. He has lost contact with one of his two adult children. The contact he retains with his second child is described as minimal. He left his employment when he relocated interstate. He has lost his community. I am told he felt compelled to relocate because of the nature of his offending. I am told he now lives a very quiet and solitary existence. Upon relocating the defendant sought out the assistance of a psychologist. He has engaged in 11 appointments between March and November 2020. The appointments ceased when the psychologist apparently formed the view that "maximum therapeutic value" had been achieved. I am told the psychological assessment disclosed no mental health issues although noted increased depression, anxiety and stress which in the psychologist's view was predominantly attributable to the criminal charges. No report has been provided to the Court. There is no submission, that there is any nexus between any psychological condition and the offending.

In sentencing the defendant I have regard to the principles articulated by Porter J in *Director of Public Prosecutions v Latham* [2009] TASSC 101 and referred to in *Taylor v The Queen* [2015] TASCCA 7. In respect to each of the 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.**

The images possessed by the defendant were predominantly category 1 images. They were explicit images of young female children, ranging from approximately 10 months to 13 years in sexually suggestive poses. Many of the images focussed on the genitalia of the children. I have no information to suggest there was any fear or distress apparent in any of the images. There is no evidence of physical harm. What is depicted on the images is consistent with them being categorised at the lowest level of seriousness on the ANVIL Scale.

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

The defendant accepts the State's assertion that he would have been in possession of approximately 1735 child exploitation material files. I note a number of the images were duplicated between devices, and it is not asserted the defendant was in possession of this number of different images. I acknowledge the number is less than that which is frequently encountered by courts sentencing for this type of offending, but it is far from a menial amount.

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

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

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

The defendant admits the period of offending has been approximately 10 years. Whilst I accept there is no evidence the material in the defendant's possession had been categorised or stored in any sophisticated manner, the length of time over which he was involved in accessing such material is a very strong indication that his interest in the material is high.

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

The defendant lived with his wife at the time. His wife was able to access his phone and the Toshiba hard drive and discover material that led to police being called. Clearly the risk of accidental discovery existed.

In sentencing the defendant I have regard to the categorisation of the material generally and I accept it falls towards the lower end of the scale of seriousness. That certainly does not, equate with a conclusion that no harm was occasioned to the children appearing in the images. Despite the absence of obvious physical harm or fear or distress in the images, it is notoriously understood that children involved in child exploitation matters often experience irreparable

damage and significant psychological and psychiatric harm. 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. Possession and viewing exacerbates and extends the abuse and exploitation of those children. Accessing and possessing the material creates a demand for its production. Clearly general deterrence and denunciation are paramount sentencing considerations. Given the length of time over which the defendant was involved in accessing child exploitation material, specific deterrence is also a relevant consideration. Behaviour such as the defendant's must be condemned by the courts. It must be understood by the defendant and the broader community that accessing and possessing child pornography in any way, and to some extent regardless of the level of depravity associated with the images, is simply not to be tolerated. The fact the images are predominantly category 1 is of course relevant, but it does not in my view undermine the importance of general deterrence and denunciation. Possession of such images must be equally condemned to guard against the risk that such imagery is somehow normalised or regarded as inoffensive.

I take into account the defendant's pleas of guilty. It has a utilitarian benefit and facilitates the administration of justice. I am of the view that the seriousness of the offending necessitates the imposition of a period of imprisonment. I think however, because of the nature of the material involved, and the very tangible effect the defendant's offending has already had upon his life, the period of imprisonment ought to be suspended as an incentive to the defendant to not re-offend. Mr Schmedding, you must clearly understand however that if you are foolish enough to re-offend actual imprisonment is almost inevitable.

You are convicted. You are sentenced to a period of imprisonment of 6 months. The whole of that sentence will be suspended on condition that you commit no offence punishable by imprisonment for a period of two years from today's date. This is a reportable offence under the *Community Protection (Offender Reporting Act) 2005*. Possession of child exploitation material is a class 1 offence. I am not satisfied that you do not pose a risk of committing a reportable offence within the meaning of that term in the 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 5 years from today's date.

I make a forfeiture order pursuant to s 130F(2) of the *Criminal Code* that the Toshiba hard drive, Dell computer, Cooler Master computer and iPad be forfeited to the State.