

GCL you have pleaded guilty to one count of aggravated sexual assault. The victim of your crime was the daughter of one your close friends. On a weekend when the complainant was aged approximately 13 years, and you were aged 49 or 50, the complainant and her father travelled to stay with you at your residence. The three of you went to the local hotel. All of you consumed alcohol. You subsequently returned to your residence and consumed more alcohol. You and the complainant also smoked some cannabis. Both you and the complainant were intoxicated by your consumption of alcohol and cannabis. The complainant's father was also heavily intoxicated. It seems he passed out in the lounge room of the house. You and the complainant were sitting in the kitchen. You asked the complainant could you cuddle her and then wrapped your arm around her waist. You moved your hand to her breast and used your thumb to touch her breast through her clothing. You then cupped her breast, again over her clothing. The complainant felt uneasy and scared and told you she was going to bed. She went to the bedroom previously allocated to her and got into bed fully clothed. A few minutes later you got into the same bed and laid down next to her. You put your arm around her and touched her on the breast. You then moved your hand down across her body, unbuttoned her jeans and pulled down her zipper. You placed your hand underneath her underpants and cupped her vagina before lowering her jeans further. You rubbed her vagina then used your finger to penetrate her vagina, moving your finger in and out approximately six times. Penetration was to the point of your first knuckle. During the sexual assault you made comments to the complainant such as "I can tell by the way you were looking at me from N's couch that you wanted this to happen"; "Does your boyfriend make you wet, and make you feel like this" and "Do you do this with your boyfriend?"

Throughout the assault the complainant was terrified. You eventually desisted and moved your hand away. The complainant told you she wanted you to leave. You didn't immediately do so but told her you wanted to listen to her fall asleep. She lay awake until you left a few minutes later. The following morning the complainant and her father left the house. Nothing was said about the incident. The complainant subsequently made a disclosure to some friends and to a counsellor at her school. The matter was reported to police in September 2019.

You were subsequently interviewed. You initially denied that anything had occurred between you and the complainant but went on to tell police that you recalled an incident that had occurred between you and the complainant at a time when the complainant was staying at your residence with her father. You agreed you and the complainant had consumed some cannabis and had been consuming alcohol. Whilst the details of the incident you described varied from that of the complainant somewhat, you did admit you had penetrated her vagina with your finger. You also told police you believed the complainant was 15 or 16 years of age at the time because she had been consuming alcohol at the local hotel. You told police it did not enter your mind to begin with that she may be underage, but later thought "this is not right, this is not the right thing to do". The State accepts you may have been honestly mistaken as to the complainant's age but, that such a mistake was not reasonable in the circumstances given the young appearance of the complainant and your failure to undertake any steps to properly ascertain her age. The State assert any mistaken belief was a consequence of your intoxication, and therefore not mitigatory. I agree with that assessment, and note that even if the complainant had been a year or 2 older, the age disparity was still considerable.

You were originally charged with one count of penetrative sexual abuse of a young person. You entered a plea of guilty to this count on 11 August 2020 in the Magistrates Court. When the matter was reviewed it was determined the appropriate charge to lay was one of aggravated sexual assault. There has never been any suggestion the matter would proceed other than by way of a plea of guilty, but the matter was listed for a disputed facts hearing which necessitated the complainant and some other witnesses being briefed by the State in anticipation of giving evidence. In her victim impact statement the complainant speaks of the increased anxiety she felt when she believed she would need to give evidence. Ultimately the disputed facts hearing did not proceed. That counts in your favour as the complainant was spared the ordeal of having to give evidence and was ultimately vindicated by your acceptance of her account. Your crime has, not surprisingly, had a significant effect upon her. It has affected her relationship with family members, particularly her father. It has left her with feelings of insecurity and hypervigilance. She has experienced difficulties in relationships and has ongoing trust issues and mental health difficulties.

You are now 72 years of age. You suffer from a number of health conditions including a heart arrhythmia for which you need ongoing treatment. I have nothing before me however to suggest

the medical conditions from which you suffer are such that they would warrant a reduction in an otherwise appropriate sentence.

You do have some prior convictions, but I do not regard any of them as particularly relevant. There is a dated matter from 1987 involving a criminal code assault and unlawfully setting fire to property. You received by way of sentence, a wholly suspended period of imprisonment. You did not breach the terms of that order. Otherwise, your record consists of traffic matters.

You have had an industrious working life, being employed for, many years. You are currently in receipt of an aged pension.

In sentencing I note it is not suggested you deliberately plied the complainant with alcohol or cannabis so as to create an opportunity for the crime to occur. Nevertheless, the complainant was in a most vulnerable position. She was young and intoxicated and you took advantage of that. To the extent the complainant was willingly participating in the consumption of alcohol and cannabis, it was with the very limited insight and wisdom that comes with the maturity of a 13 year old who clearly did not have the benefit of a parent who was exercising any sensible level of care or guidance. I will sentence on the basis your behaviour was opportunistic, rather than predatory.

In sentencing I take into account that this was an isolated incident. It was relatively short lived, although far from momentary. The complainant had displayed discomfort at your expression of sexual interest in the kitchen. You nevertheless followed her into the bedroom and committed the assault which involved several discreet elements. It is to your credit that you ultimately realised that what you were doing was wrong and desisted of your own volition. I will sentence on the basis this was out of character for you.

Crimes of this nature are always serious. They almost inevitably have a significant deleterious effect upon the victim. You took advantage of an opportunity to sexually abuse the complainant when she was young, vulnerable and intoxicated. I need to impose a sentence that reflects the gravity of that behaviour and which deters others who may be minded to commit similar crimes. Quite simply, the sexual abuse of children must always be condemned and that needs to be reflected in the sentence imposed. I have come to the conclusion the only sentence that adequately meets all of those sentencing aims is a period of actual imprisonment. Because of

your age, your plea of guilty and the absence of any prior convictions for sexual offending I will allow the earliest possible eligibility for parole.

Mr L, you are convicted and sentenced to 12 months' imprisonment. I order that you not be eligible for parole until you have served one half of that sentence. I 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 the *Community Protection Offender Reporting Act 2005* for a period of 5 years from the date of your release.