

The defendant, Kevin Michael Phillips, who was 69 years old at the time of the offending, has pleaded guilty to one count of possessing child exploitation material.

This is not his first offence. His name is on the register pursuant to the *Community Protection (Offender Reporting) Act* 2005 until February 2025.

In February 2017 he pleaded guilty to two counts of possession of such material and one count of accessing such material.

In sentencing him on that occasion Brett J said:

"The first count of possession arose from a police search of your home on 7 May 2015. During that search, a considerable amount of child exploitation material was located on various computers and electronic devices. In total, you were in possession of 17,719 images and 1,730 videos. This material had been located and downloaded by you from a variety of sources on the Internet, with the use of software appropriate for that task. The material has been categorised in accordance with the scale applied in *R v Oliver*, and falls within each of categories 1 to 6. A significant number of the images and videos are in categories 4 and 5. Category 4 depicts penetrative sexual activity between adults and children, and category 5 depicts sadism, bestiality or humiliation. Several of the images and videos found in your possession depict adults having sex with infants, including a number which depict the full penetration by an adult penis of a child estimated to be as young as 1-year-old ...

On 15 June 2016, while you were on bail awaiting sentence for the 2015 crime, police conducted a further search of your home and located the child exploitation material which is the subject of the second count of possession. Once again, that material was located on a series of storage devices and computers, and consisted of 1,633 still images. The images are spread among categories 1 to 6. A significant proportion of this material was stored on a computer which had been purchased by you within a couple of months following the seizure by police in May 2015 of the equipment relating to the first charge. In aggregate, this computer contained 1,096 images, including 300 in category 4, 24 in category 5 and 319 in category 6. Some of the images on this computer depict the sexual abuse of infant children as young as 1 year of age.

The prosecution asserts, and it is accepted by you, that the computer which you purchased in 2015 was free of such material at the time of purchase. Some of this material may have been acquired by you prior to being charged with and pleading guilty to the offence in 2015. However, the charge of accessing child exploitation material relates to the period between 7 May 2016 and 10 June 2016, a period which commences one day after your plea of guilty to the 2015 charge. Your access of this material was carried out by the use of file sharing programs and involved a specific search for child exploitation material. Police also discovered software programs designed to erase evidence of these searches, although it is not

clear to me that you had actually used those programs at any time relevant to these charges.

It is impossible to say how much of the material found in your possession was accessed by you during the above period. However, the titles of the sources of material downloaded by you on 10 June 2016, for example, suggest that you were accessing child exploitation material of considerable depravity and seriousness.

You are 65 years of age. Your criminal history consists of one minor offence of dishonesty, committed many years ago, and a few traffic offences. You have an excellent work record and have throughout your life been heavily involved in the sport of rowing in both a competitive and coaching capacity. In all respects, other than the commission of these offences, you would seem to be a person of good character.

However, the crimes which you have committed are extremely serious. It is not alleged that you have produced or shared any of the material, but your participation in the market for such material supports and encourages the activity of others involved in the serious sexual and physical abuse of children. As I said recently in sentencing comments in respect of similar crimes committed by another person:

'The collection of child exploitation material of any description creates a market for, and thereby encourages, the production of such material. This directly and adversely impacts on the children who are the subject of that material, and generally encourages the ongoing abuse of children. Obviously, the impact on the children concerned is directly proportionate to the nature of the material, and the number of children affected correlates to the amount of material.'

In this case, the quantity and nature of the material accessed and possessed by you demonstrates that many children, some of them extremely young, were subjected to serious sexual abuse during the production of the relevant material. For this reason, as well as the other considerations discussed by Porter J in *Director of Public Prosecutions v Latham* [2009] TASSC 101, general deterrence and community denunciation are the primary sentencing considerations in respect of these crimes. Further, despite your prior good record, I am of the view that specific deterrence must play a part in the sentence. Your conduct in continuing your criminal conduct after initial detection in early 2015, and the commission of the crimes in 2016 while on bail awaiting sentence for the first crime, indicates a concerning lack of insight and persistence in your criminal behaviour. Whilst you claimed to police that you commenced this activity because of curiosity and were uncertain about the legality of possession of some of the material, the extent of the material in your possession, and your persistence in accessing that material, makes it impossible for me to accept that you did not have a clear understanding of, and interest in the evil nature of the activity depicted in the material."

He was sentenced to 15 months' imprisonment with the last 5 months suspended for 3 years.

On Monday 21 December 2020 at 7.35am members of Tasmania Police executed a search warrant at the defendant's residence. In total police seized 52 exhibits comprising one operational computer and 51 electronic storage devices.

A forensic examination of the devices seized by police in the search was subsequently conducted by Tasmania Police. The material was viewed and classified using the Interpol baseline categorisation system which is set out in the Crown Statement of Facts in the Crown Papers.

The defendant is charged with possession of child exploitation material that was located on nine of the 52 seized exhibits. The child exploitation material identified was categorised according to the Interpol system as follows:

- (a) 33 images were category 1;
- (b) 10 images were category 2; and
- (c) 529 written stories were category 2.

The images were located on a single storage device (exhibit 375151904) that was seized from the defendant's bedroom. The images depicted a prepubescent female undressing, masturbating and having her genitals touched by an adult.

In relation to the written material that has been reviewed, the material describes children of both sexes under the age of 18 being raped by adults, otherwise sexually abused by adults, or having sex with other children. The written material focuses on the sexual abuse of children, and describes that abuse in a graphic manner.

In respect of the written material, only 529 stories have been categorised by investigators due to the time consuming nature of reviewing the written material. It is estimated by investigators that the defendant possessed approximately 2,850 unique written stories in a folder.

In addition to that folder the defendant was in possession of further written child exploitation material which has been categorised and does not form part of the 2,850 individual plaintext files. The estimate of the defendant's possession of approximately 2,850 written stories is therefore conservative.

After an examination of the seized exhibits the defendant was arrested on 20 January 2021 and participated in a further record of interview. Among other things he stated the following:

- The stories were about sex involving people of all sorts of ages.
- He prefers reading the stories that involve teenagers and adults.
- He estimated that he has read 20 or 30 stories.
- He enjoys reading the stories.
- He would read stories a couple of times a month.
- He does not read the stories with small children and he just passes over them as he prefer the stories with teenagers.
- He did not think that child exploitation material included written stories.

- In relation to the images, he denied looking at them and said that he must have downloaded them at some stage and transferred them onto the storage device.
- He knows he is not allowed to "touch this stuff" (referring to the images), so he does not.

Following the interview the defendant was charged and subsequently bailed. He has not spent any time in custody in relation to this matter.

His first appearance in the Magistrates Court was on 19 April 2021. On 11 June 2021 he was committed for trial, and in that same month indicated that the matter was likely capable of resolution. The subsequent plea of guilty was therefore an early plea.

Pursuant to s 130F(2) of the *Criminal Code*, the State seeks an order that the exhibits listed in the Crown Statement of Facts at par 4, items (a)–(i) be forfeited to the State of Tasmania. I make that order.

In examination of the seized devices, investigators located deleted child exploitation material files on five exhibits in the defendant's possession. Pursuant to s 130F(3) of the *Criminal Code*, the State seeks and order that the exhibits listed at par 23 of the Crown Statement of Facts, items (a)–(e), be forfeited to the State of Tasmania. I make that order.

In examination of the seized devices, investigators located one video on exhibit no 144287594, that contains child exploitation material. Pursuant to s 130F(3) of the *Criminal Code*, the State seeks an order that the exhibit be forfeited to the State of Tasmania. I make that order

This matter is a reportable offence pursuant to the provisions of the *Community Protection (Offender Reporting) Act 2005*. Possession of child exploitation material is a Class 1 offence. I will make such an order.

Apart from the defendant's early plea of guilty and his co-operation with the authorities, I do not accept that any significant mitigating circumstances have been identified in counsel's submissions on his behalf. I note that the number of images was low, and that the defendant may have thought that fictional written child exploitation material was not illegal in the same way images were, although that is difficult to believe in view of the repeated possession of images, and I find it difficult to believe that those images were not viewed. In view of all of that, in my judgment the defendant's continuing offending calls for a sentence that will serve as a strong personal deterrent.

The defendant is convicted and sentenced to 18 months' imprisonment. I order that he not be eligible for parole until he has served 10 months of that sentence.

The order under the *Community Protection (Offender Reporting) Act* is for a period of 10 years from the expiration of the current order.