

STATE OF TASMANIA v KEREN CHEN
COMMENTS ON PASSING SENTENCE

6 APRIL 2022
ESTCOURT J

The defendant Keren Chen aged 23 has pleaded guilty before to a single count of possession of child exploitation material contrary to s 130C of the Criminal Code. The indictment charges the defendant with possessing child exploitation material (CEM) on 6 September 2021.

The amended Crown statement of facts particularised the CEM according to the Interpol Baseline Categorisation System (IBCS). There were in the defendant's possession, 7,878 images and 1,503 videos totalling 9,381 items. There are 2,798 items (29.8%) in IBCS category 1, which depicts a child involved in a sexual act, witnessing a sexual act, or the material is focused/concentrated on the child's anal or genital region. There are 6,583 items (70.2%) of the items in IBCS category 2 and classified into this category by way of being illegal according to local legislation either by way of age or content.

The defendant is Chinese and a former student at UTAS. He is a 2020 graduate Bachelor of Computer Science from the University. He has, since graduation, been effectively unemployed save for casual fruit picking. Since arrival in Tasmania he has experienced loneliness. He felt isolated and alienated due to the age difference between himself and most Chinese students and the language and cultural barriers with the rest of the student body. The Chinese student community were on average I am told in their near or more than thirty. He was not readily accepted by them as a younger, single, introverted youth who had no sporting prowess and few social skills.

He spent increasing time on line and frequently downloaded adult pornography. He again drifted into CEM due to his interest in younger women. COVID caused the isolation to deepen and his feelings of loneliness to increase. He could not work. He could not return to China. What few social gatherings he did attend ceased. He has not been happy in Tasmania and will return to China at his earliest opportunity. But for being on bail he would have returned home already.

I am told the consequences of his offending are profound. His family hopes of relocating to Australia are dashed. It is highly probably that entry into other countries will be difficult also. There is considerable parental disappointment and alienation.

As to the *Latham* considerations, the State notes that the images and videos located depict real children who are infants and older engaging in sexual acts, including oral, vaginal and anal sex with adult males. While the State accepts that the defendant did not intend to distribute child exploitation material to others, it is submitted that he was reckless as to this and knew this could be a consequence of using a torrent program to download material for his own use. It is accepted by the State that there was no evidence of organisation or categorisation of the material found beyond the form in which it was downloaded. Finally the State notes that the defendants level of interest in the material was high as evidenced by the amount of material found, the distribution of it across a number of devices (both physical and cloud-based), and the fact that, on his own admissions, had been downloading and at least occasionally paying for CEM for a number of years.

The defendant has no prior convictions.

The possession of child exploitation material is a very serious crime. As has been noted by other judges of this Court, children suffer appallingly as a result of the production of these images. To be in possession of them, without more, contributes to a demand for them, and the demand perpetuates the abuse of children. Having said that, the images in this case are not by any means of the worst kind.

While possession of child exploitation material will generally attract a sentence of immediate imprisonment and while there were a relatively large number of items in this case, given - the percentage categorisation of the images and videos, the absence of violence or physical, (as opposed to almost certain psychological) harm, beyond that violence which is implicit in the creating these images, the lack of any intentional distribution or organising and cataloguing or material gain, and given the defendant's age and personal circumstances and his co-operation with authorities and his early plea of guilty I propose to deal with this case by way of a suspended sentence.

The State seeks an order pursuant to s 130F(4) of the *Criminal Code* that the five devices listed at paragraph 16 of the Crown Statement of Facts and which are recorded on Tasmania Police Property Seizure Record (Receipt) 125326 (items 1, 2, 3(a), 4 and 5) be forfeited to the State. I make that order.

The defendant is convicted and is sentenced to 9 months imprisonment which sentence I wholly suspend on condition that he commit no offence punishable by imprisonment for a period of 12 months.

I make no order under the Community Protection (Offender Reporting) Act 2005 in view of the unchallenged assertion that the defendant is now acutely aware that CEM promotes the exploitation and abuse of children somewhere and that this has caused genuine remorse and the likelihood he has now reached a degree of maturity to appreciate that CEM is not a victimless crime.