

Mr R has pleaded guilty to one count of persistent sexual abuse of a child, two counts of aggravated sexual assault relating to a second child, two counts of possessing child exploitation material, and two counts of distribution of child exploitation material. He has also pleaded guilty to two charges that I will deal with under s 385A of the *Criminal Code* – possessing a bestiality product, and possessing controlled drug, namely MDMA or ecstasy.

The charge of persistent sexual abuse of a child relates to Mr R's sexual abuse of his niece over a period of about 10 years, beginning when she was about 7 years old. Mr R lived in the same household as she did from time to time. He was about 20 or 21 when the sexual abuse started. The Crown relied upon unlawful sexual acts committed by Mr R on seven particularised occasions.

On the first occasion, when his niece was 7 or 8 years old, he took her into some bushland, pulled her pants down, performed oral sex on her, and started to touch her vagina with his fingers, but stopped when she pushed him away and told him to stop.

On the second occasion his niece was 10 or 11 years old. Mr R took her to her bedroom, undressed her, laid her on her bed, performed oral sex on her, and took photographs and/or videos of her. He also touched her chest and vagina with his fingers. He penetrated her vagina to a minimal extent, and stopped when she told him to and said it was hurting.

On the third occasion his niece was 10 or 11 years old. She was away from school because she was sick. She had a fever and was sleeping naked in her bed. Mr R went into the bedroom, woke her, pulled her down to the foot of her bed, commenced performing oral sex on her, and masturbated himself while doing that.

The fourth occasion was when the niece was about 12 years old. Mr R took her into his bedroom one afternoon after school, got her to watch a pornographic video on a television set, pulled down her pants, performed oral sex on her, touched her vagina with his fingers, switched on a vibrator, rubbed it on her vagina, and inserted it to a small degree. The complainant recalls that Mr R inserted this vibrator into her vagina to a small degree five or six times during the period of offending.

The fifth occasion occurred when the complainant was about 13 years old. At that time Mr R was not living in the same household. She came to his house for a sleepover. She slept on a couch in his lounge room. During the night he woke her by touching her vagina, and went on to perform oral sex on her, insert his fingers into her vagina, and insert the vibrator a small way into her vagina. It hurt. She told him to stop, and he did.

The sixth occasion involved an act of rape. The complainant was 16 years old, and was visiting Mr R at his home. He took her to his bedroom and told her to undress but she refused. A pornographic movie was playing on his television. He lay the complainant on his bed, took her pants down, performed oral sex on her, touched her breasts, touched her vagina with his fingers, and then inserted them. It hurt and she moved away. He then resumed performing oral sex on her. A little later he started masturbating, performed oral sex on her again, lay on top of her and started to insert his penis into her vagina. She felt pain and started pushing him away. He

got up. He told her to stop, forced her to her knees and ejaculated onto her chest. When driving her home, he said to her, "Next time, next time. Just, you didn't relax, we'll do it next time."

The seventh occasion was when the complainant was 16 years old. It involved another act of rape. She was visiting Mr R at his home. When she was washing her hands in his bathroom, he entered the room, pulled her pants down, sat her on the sink, pulled his own pants down, and started masturbating. The complainant tried to push him away, without success. He grabbed her back with one hand and inserted his penis into her vagina with his other hand. She kicked him out of the way, jumped down, pulled up her pants, and ran out of the room.

These were not isolated occasions. Mr R engaged in frequent sexual activity with his niece over the years in question. The seven particularised occasions are identifiable occasions that the complainant was able to describe in detail.

The complainant attended a police station with her mother in 2016 and reported that Mr R had sexually assaulted her when she was between the ages of 8 and 18. An appointment was made for her to return to make a formal statutory declaration but she cancelled the appointment. Mr R was interviewed by police officers at that time and denied the allegations.

In 2020 police officers had occasion to examine Mr R's mobile phone in the course of an investigation relating to child exploitation material. They found about eight messages to other people saying, for example, "I licked and fucked my little niece from 5 till 14", and "Yeah I have fucked her, done everything with her, I love licking her out." Consequently police officers made contact with the complainant and she provided information about Mr R's sexual abuse of her.

I have received a victim impact statement from this complainant. She now has a partner and young children, but has been troubled since childhood by terrible psychological symptoms including flashbacks, suicidal thoughts, shame, embarrassment, fears for her safety, lack of self-confidence, avoidant behaviour, difficulties with intimacy, and problems in establishing friendships. A number of family members disbelieved her. She has not heard from her mother for years. She has not sought professional help because she has not been able to bring herself to talk to a stranger about the sexual abuse and its consequences.

The two counts of aggravated sexual assault relate to crimes that Mr R committed upon a 15 year old girl. He met her through her father. He started messaging her when she was about 13 or 14. When she was around 14 or 15 he made it obvious in his messages that he was interested in her in a sexual way. When he was 30 years old and she was 15, he took her to his home where they watched football, drank alcohol, and went to bed together. He started kissing her and touching her body, and committed the crime of aggravated sexual assault by performing oral sex on her. He fell asleep. The next morning this complainant awoke to find Mr R's hand down her pants touching her vagina. He inserted one finger into her vagina, thereby again committing the crime of aggravated sexual assault. The girl pushed his hand away and told him that she had to leave. He drove her to a shopping centre. They continued to message each other from time to time after that, but there was no further sexual contact.

I have received a victim impact statement from this second complainant. She had been sexually assaulted by another man before the encounter with Mr R. She believes that his crimes exacerbated her problems. As an adult, she has difficulty establishing intimate relationships. She feels that she is not normal, and that she is a damaged person. She gets urges to self-harm.

She is conscious of being unable to enjoy being young, dating and engaging in casual sex like other people of her age.

On 23 April 2020 some police officers executed a search warrant at Mr R's home in relation to an unrelated matter. They seized his mobile phone and asked him for its passcode. He agreed to provide the passcode if they would allow him to delete sexual videos of himself and his girlfriend. They agreed, but he attempted to delete about 70 videos and images from the Google photos section of the phone. The police officers later found child exploitation material on that phone. That material consisted of 72 videos and images. They were categorised as follows:

- There were 2 items in Category 5, which covers sadism, bestiality, humiliation, torture or child abuse.
- There were 18 items in Category 4, which covers penetrative sexual activity involving children with other children or adults.
- There were 8 items in Category 3, which covers non-penetrative sexual activity between adults and children, including mutual masturbation.
- There were 27 items in Category 2, which covers solo masturbation by a child, sexual acts between children with no penetration, and penetrative use of sex toys by a child.
- There were 17 items in Category 1, which covers material involving no sexual activity, but which is suggestive in nature, including items involving nudity, sexually suggestive posing, emphasis on genital areas, or solo urination.

As well as the child exploitation material on the phone, there was a video depicting a woman having her vagina and anus licked by a dog. That video is the subject of the charge of possessing a bestiality product.

In the course of examining Mr R's mobile phone, police officers found that he had distributed child exploitation material on 12 occasions to 10 different user names using an application named Kik over a 4 week period from 21 March to 16 April 2020. The first charge of possessing child exploitation material and the first charge of distributing child exploitation material both relate to crimes detected during that first search.

Police officers executed a second search warrant at Mr R's home on 4 September 2020, found that he had acquired more child exploitation material, and found that he had continued to distribute child exploitation material after the first search. They also located 8 ecstasy pills under a cowboy hat in his bedroom. They are the subject of the charge of possessing a controlled drug.

On a mobile phone belonging to Mr R the police found 24 videos and images that were child exploitation material. They were categorised as follows:

- There was 1 item in Category 5. It depicted a dog having sexual intercourse with a girl aged about 10 to 12 while she lay on her stomach.
- There were 9 items in Category 4. One of them depicted a man having sexual intercourse with a girl aged about 12 to 14 years.
- There were 5 items in Category 3. One of them depicted a man rubbing his erect penis and fingers on a girl aged about 10 years. Another depicted a woman performing oral sex on an 8 year old boy.
- There were 7 items in Category 2.

- There were 2 items in Category 1.

Examination of the mobile phone also revealed that Mr R had distributed child exploitation material to other people on 5 occasions during the period from 29 July to 10 August 2020.

Mr R was formally interviewed by police officers on 4 September 2020. He made full admissions in relation to the child exploitation material on the two mobile phones, the material distributed using the two phones, the bestiality video and the ecstasy.

Mr R's collections of child exploitation material were much smaller than those of many offenders who are brought before this Court. However the distribution of the material is a matter of particular concern because it is not possible to assess the mental health of the recipients, and there is a great danger that sending child exploitation material to some of them might result in dreadful sexual abuse of children with whom they have contact.

Mr R is now in his late 30's. He has no relevant prior convictions. However on 23 December 2020 a magistrate convicted him of 60 summary offences and sentenced him to a total of 12 months' imprisonment, of which 7 months was suspended. The charges related mainly to dishonesty, drug and driving offences committed between April 2019 and April 2020. He finished serving the operative part of his sentence on 4 February 2021. He failed to appear in this Court in late April 2021, was arrested on 30 April 2021, and has been in custody ever since. He had earlier spent 16 days in custody after serving the magistrate's sentence, before being bailed. I will therefore backdate the sentence that I impose today to commence on 14 April 2021.

Mr R dropped out of high school at an early stage and was employed working in stables, with horses, in rodeos, and as a cowboy. He became addicted to methylamphetamine in 2018, became a daily user of the drug, lost his employment and lost his accommodation. He had a good employment record until the drug addiction took its toll in 2019.

In the time that he has been in custody he has become a trusted inmate. He works in the kitchen. He would like to undertake courses for the purpose of his rehabilitation, but has been prevented from engaging in them because of the COVID-19 pandemic. The pandemic has also resulted in prison life being more restricted and unpleasant than it normally is. Since he has been in custody he has found faith, and commenced reading the Bible.

It counts in his favour that he has pleaded guilty to these charges, with the result that the two complainants have been spared the ordeal of giving evidence at a jury trial, and the State has been spared the inconvenience and expense of taking all these matters to trial. There probably would have been two or more trials if Mr R had not pleaded guilty. His pleas of guilty also reflect remorse on his part, and acceptance of responsibility by him.

It is worth mentioning that there was no risk of anyone being accidentally exposed to Mr R's child exploitation material because it was on mobile phones that were passcode protected. However it counts against him that he and other child pornography enthusiasts engaged in the swapping of the exploitation material.

I think it appropriate in this case to impose a global sentence in relation to all of Mr R's crimes and offences. A very substantial sentence is called for, particularly because of the sexual abuse of his niece which continued over many years and has left her with ongoing substantial

psychological difficulties that may well continue for the rest of her life. However, because of Mr R's pleas of guilty, it is appropriate for me to impose a sentence about 20 to 25 % shorter than I would otherwise have imposed, and to impose the shortest possible non-parole period.

ATR, I convict you and sentence you to 9 years' imprisonment with effect from 14 April 2021. You will not be eligible for parole until you have served 4 years 6 months of this sentence. I order that the white Aspera Jazz mobile phone and the black Telstra ZTE mobile phone seized by police officers be forfeited to the State of Tasmania. I order that the Registrar appointed under s 42 of the *Community Protection (Offender Reporting) Act 2005* place your name on the register under that Act and that you comply with the reporting obligations under that Act for the remainder of your life.