

Mr S, you have pleaded guilty to a charge of penetrative sexual abuse of a child or young person. The complainant was aged 12 at the time of your offending. At the time she had an active profile on the dating application, Grindr under the name Lily. Grindr is a gay male sex dating application. According to that profile she was 18 years old.

On 5 April 2021, you initiated a conversation with her. During that conversation you asked her what she was looking for and she replied "anything really a good time I guess". she told you she preferred older men and that she "was available". You told her that you were free for the rest of the day if she was interested in taking advantage of you. You later met in South Hobart. There you talked for a while and you kissed. As it got dark the complainant left to go home. The next day, 6 April, she left her home without telling her family. They notified police of her absence. At about 4 pm you met her again in South Hobart. You drove her to your house there you ate some food and watched television. You kissed the complainant's vagina and you engaged in oral sex. In the lounge room you engaged in sexual intercourse. You removed your penis before you ejaculated. You do not use a condom and no other form of birth control was being used. At the time of the intercourse the complainant had her period. You both went into the bedroom where you continued to engage in sexual acts including vaginal sex. The complainant then went to the spare room of the house to sleep.

On 7 April, you both left your home and you drove to Claremont Village. The complainant left you about 9am but returned to your home about 5pm that day. It was then that she told you that she was 12 years old. You became upset and she left about 6pm.

On 8 April, the complainant was located by police in New Town and taken to the Royal Hobart Hospital. She recorded what she recalled of the sexual encounters with you. She said that you had kissed her all over, and that you asked her if she was comfortable with you doing that. She said she was. She told police that you did not know that she was 12 until you saw a Facebook page. At that point you had asked her whether that was true. She described you becoming nervous and sweaty upon discovering her age, and on that basis she had left.

At around 7pm on 8 April, a search warrant was executed at your address and you made statements to police under caution. These included that you were lied to from the beginning, that you were not aware of the complainant's age, and that the complainant had kissed you on meeting. You stated that whatever had occurred was consensual and that you thought the complainant was 18 as her Grindr profile stated she was. You said that you were a bad judge of age. You said that you had asked her in person about her age and she had said she was 18. When asked about that conversation you stated she said "she was like the oldest of all these kids". You said that you had judged the complainant's age based on a comparison with your ex-partner in terms of her height and bodily developments.

You said the complainant came back to your house after being out for a few hours on 7 April 2021; that she had started to cry and you took her outside to find out what was going on. You said that she told you she was not 18. You found out her actual age. She left the house shortly afterwards. You said you did not use protection when you had sexual intercourse and that the complainant had her period at the time. You said that after you found out the complainant's real age you were angry and that you had since deleted the Grindr application.

I have received a report from Dr Blake in relation to you. He describes you as a person who has interpersonal difficulties and difficulty connecting with women. Your first relationship was when you were 21 years old and was with a 26 year old woman. It lasted about two months. Your next relationship was about 9 years later. You dated long distance for about 4 months. You separated from that person about 1 month after deciding to live closer together. You then had a short relationship after you met your future wife who was pregnant at the time. You had a daughter together and you were together for about 10 years in all. You separated about 10 years ago and the relationship with her is apparently amicable. You have apparently not been in a relationship since. You describe yourself to Dr Blake as exclusively heterosexual, notwithstanding that the engagement with the complainant arose as a result of you being on the Grindr application. You described your offending to Dr Blake during which, you repeatedly stated to him that the complainant never told you that she was only 12 years old. You denied that the complainant was like a 12 year old, stating that she was mature for her age and that you felt emotionally connected to her.

There is no evidence recorded in Dr Blake's report or indeed anywhere else of alcohol or drug abuse, nor of any mental illness. You are not prescribed any medications for physical or mental health issues. Dr Blake undertook a risk assessment in relation to you. That risk assessment indicates that you are at low risk of sexual recidivism. The risks factors that were identified in relation to you were identified to include poor insight, intimate relationship problems. The strongest predictors of sexual recidivism were not present, namely an anti-social lifestyle, a psychopathic personality disorder and serious sexual deviants. The risks that you present relate primarily to your lack of social connections; Connections that would keep you busy and engaged with pro-social adults who can provide you with emotional support and the potential for a relationship: that your loneliness could cause you to fall in to this sort of behaviour again.

Importantly, the clinical opinion of Dr Blake is that you do not have a sexual interest in children. This appears to be an isolated incident.

However a matter of concern to Dr Blake, is a pattern of turning a blind eye to certain realities in order to have your sexual needs met. In this instance his opinion is that your sexual boundaries become flexible to abate your chronic loneliness. That observation emerged from your suggestion that you had asked the victim about being 18 years old “to test her reaction”, a course which would seem to suggest that you entertained questions in relation to her age. Your counsel suggests that this was in fact done on the basis that you were concerned about the age difference.

As to risk, a report has been prepared for me by a community corrections, who undertook an assessment using the Static-99R test. you received a total score which places you in the low risk level; low for being charged or convicted with another sexual offence in the future.

In sentencing you Mr S, I acknowledge the circumstances which led to this conduct including the relatively short duration of the behaviour. I note the absence of prior convictions, but plainly you need to take steps to deal with the issues that gave rise to the circumstances that have caused you to come before the Court. The Court has an obligation to protect children. That includes protecting children from themselves. The whole purpose of this prosecution is to reinforce that principle. As a 12 year old child, the complainant needs the protection of the Court from her own proclivities.

The pre-sentence report indicates that not only do you present as someone who has a very low risk of recidivism, but someone who needs to undertake ongoing counselling through your psychologist, and it will be a condition of the sentence that I impose today that that occurs. As I say, the need to deter people such as you from offending in this way is a paramount sentencing consideration in order that minors are protected from this sort of behaviour. I accept in the circumstances of this case, that you were led to believe that the complainant was 18 years old and that she reinforced that belief. Nevertheless, the obligation upon you was to ascertain with certainty that the complainant was able to consent to the conduct in which you engaged and you did not do that.

In relation to punishing you, the Court requested that a pre-sentence report be prepared and that a home detention assessment be undertaken. I did that because I considered that in all the circumstances of your offending, a home detention order would be an appropriate sentencing order which balanced the need for general deterrence, would serve to deter you, but would not require you to serve an immediate custodial sentence in a regular prison, which might otherwise have been the order that was made in relation to this offending. Ordinarily, this sort of offending properly attracts a term of imprisonment as I indicated to your counsel on the last occasion you appeared before me. But in all the circumstances of this case, I have determined having regard to the absence of prior convictions, the evidence of remorse which is repeated in the report from Dr Blake and repeated in the pre-sentence report, that it is appropriate to refrain from imposing a sentence that involves an immediate custodial term; to make some other order which satisfies the sentencing considerations that are applicable in your case, which I have said include the need for general deterrence as well as personal deterrence. I am also satisfied that this experience will have reinforced the inappropriateness of your conduct on this occasion.

In relation to your offending, Mr S, the order of the Court is that you serve a home detention order for a period of 9 months. The conditions of that order will include the core conditions that are contained in the report, as well as some additional conditions:.

1. That during the operational period of that order, you are to remain at *address* at all times, unless approved by a probation officer.
2. You must attend the community corrections office at Glenorchy for induction into this order by 10am tomorrow morning.
3. You must during the operational period of the order, maintain an operating condition an active mobile phone service and provide the contact details to community corrections and be accessible for contact through that device at all times.
4. You are to submit to the supervision of a community corrections officer as required by that officer.
5. You must not during the operational period of the order take any illicit or prohibited substances including any drugs as defined by the *Misuse of Drugs Act 2001*.
6. You are for the period to re-engage with psychologist, Peter Nelson for ongoing counselling. I note that the condition refers to your re-engagement with Mr Nelson, but accept what counsel has said to me today about the fact of your ongoing engagement with him. That is fundamental to managing the situation that you present to this Court. It is a condition of the home detention order and a failure to do so will amount to a breach of that order.

In addition, I intend to make a community corrections order that will require you to perform 50 hours of community service and you have 24 months in which to complete that service. You will be subject to a supervision order for that period, that is the 2 year period. The effect of the

order that I have just made is in addition to the home detention order, you have 50 hours of community service to perform and you are to engage with community corrections by way of full supervision of 2 years. That 2 year period represents the time that is made available to you to complete the community service work that I have just ordered you to perform.

A combination of a home detention order and community corrections, in my view, adequately addresses the circumstances of your offending in this case and reflects the fact that you were led to believe that the complainant was 18 years old at the time of this conduct, and that she actively encouraged that belief. It reflects the fact that you do not have prior convictions and it reflects the fact that you entered a very early plea of guilty in consequence of which I have reduced the penalty by 20%.

In relation to reporting, s6 of the *Community Protection Offender Reporting Act 2005* requires me to make an order in relation to your registration as an offender, unless I am satisfied that you do not pose a risk of committing a reportable offence in the future. The evidence before me, and there is no evidence to the contrary, is that you do not pose such risk and my assessment is that you do not pose such risk and my judgment is that this process in and of itself will have actively affected a sufficient reduction in any such risk to make it one which does not amount to a foundation for my being satisfied that you pose such risk of committing a reportable offence in the future, and on that basis I do not intend to make an order under the Act in relation to you.