

Mr J you were found guilty by a jury of the persistent sexual abuse of a child. The State relied upon four episodes of sexual conduct with a single complainant, your daughter.

In order to convict you it was necessary for the jury to be satisfied beyond reasonable doubt that you were guilty of at least three of those episodes.

The State submits to me that consistent with the jury's verdict I should sentence on the basis that all four of the alleged episodes occurred. It is submitted that the way the evidence fell on the trial it was a case of whether the jury accepted the complainant's evidence beyond reasonable doubt or not. It was your word against hers, and the verdict returned by the jury is consistent with the jury having accepted the complainant's version, which version included four allegations of sexual assault.

It is open to me to conclude, that the jury accepted beyond reasonable doubt the evidence of the complainant and there is no proper basis for a conclusion other than that the jury accepted beyond reasonable doubt that all four episodes occurred as described. I so find. In other words, Mr J, I am sentencing you on the basis that you engaged in each of the episodes alleged in the indictment and the verdict of guilty to the charge of persistent sexual abuse of a child constituted an acceptance by the jury that each episode occurred as described by the complainant.

Those four episodes were as follows:

- In respect of episode one – that you took the complainant's hand and placed it on your erect penis and moved her hand on your penis.
- In respect of episode two – that you touched the complainant's breasts and/or vagina under her clothing.
- In respect of episode three – that you touched her breasts and vagina under her clothing.
- In respect of episode four – the most serious episode, that you penetrated her vagina with your finger. An allegation amounting to digital rape.

An aggravating feature of your conduct, and one which has statutory force pursuant to s 11A(1)(a) of the *Sentencing Act* is the fact that the complainant was under your "care supervision and authority" when the offences were committed.

Your offending was engaged in over a relatively long period. There are gaps in the conduct, but in my view those gaps serve only to demonstrate the continuing nature of your sexual interest in her and an escalation in the gravity of that interest as is evidenced in your conduct in particular the matter referred to in episode 4. As such it is not possible for the Court to conclude that anything about your conduct was impulsive, but rather, it reveals an underlying sexual deviance. That is directly relevant to the need for personal deterrence. It also demonstrates the need for an order which protects the community, and in particular young people, from you. It justifies the conclusion that a significant reporting period is appropriate under the provisions of the *Community Protection Offender Reporting Act*. In that regard this is a class 2 offence, and the maximum reporting period for a single class 2 offence is 15 years, pursuant to s 24 of that Act. I will make an order under that Act because I am not affirmatively satisfied that there is no risk of further offending.

I received a victim impact statement from the complainant, to which I have had regard. I take account of the submissions which have been made by your counsel on your behalf in relation to it. They do not derogate from the fact that your conduct had a significant and damaging impact upon the complainant, which continues to this day. This was an abusive relationship as those consequences demonstrate.

You are 37 years of age. You appear before the Court without prior conviction for offending such as this, though I observe that that is not an unusual feature in such cases. You are in a stable relationship. You are the full time carer of your partner and registered with Centrelink in that capacity, and I accept that within that role you undertake significant responsibilities including ensuring that appointments are attended and the family home is maintained. I accept that that relationship as a carer is relevant to personal deterrence, because a term of imprisonment will impact your capacity to provide that care to a person for whom you have close and intimate feelings. Your son also suffers disabilities, and as his father you have accepted the responsibility of caring for him, and your absence from the family home will impact that care, and no doubt impact you. I emphasise that those matters do not mitigate the seriousness of your conduct, but do have a bearing upon the formulation of sentence because a term of imprisonment will bear heavily upon you by reason of your inability to provide the care and support you are used to providing and no doubt want to provide.

I am told you had a difficult upbringing, and that you have no recollection of your father. You were subjected to physical violence within the home at the hands of your mother and you have had difficulty managing that through your adult life. You are seeing psychologists to assist with those issues which I am told have caused a post traumatic stress disorder. I was also told that you were a victim of crime whilst in State care. You were moved from foster home to foster home throughout your formative years and when aged 12 or 13 you were a victim of a crime at the hands of another young person aged 19 or 20 who was also in care at the time. I have been provided with oral references, which speak to your character generally whilst I accept the thrust of those references, I do not ignore that those who speak on your behalf will have seen the public version of you, and not that version which committed the serious wrongs against your daughter. For completeness I record, that whilst the Court received evidence from two other young people, who claimed to have been the subject of unwanted sexual interference or interest from you, you are not charged with any offences in respect of that conduct, and it would be incorrect for the Court to have regard to those matters in framing penalty.

The sentencing considerations which are relevant to you, other than that of personal deterrence, to which I have referred, are primarily the need to vindicate your victim, and the need to deter others from engaging in behaviour such as this. Such conduct is notoriously difficult to detect, and places great strain upon those who are subject to it, not just in the obvious way, but because of the difficulties and often the risks associated with reporting it. Those difficulties do not stop at the time of the reporting of such conduct, but continue to the point where it is necessary to give evidence at trial.

Thus, it is only through the imposition of harsh penalties that the community can protect the vulnerable, discouraging such behaviour before it occurs. In so saying I do not ignore the fact that there are frequently other drivers at work when offending such as this occurs, but that factors does not dilute the importance of general deterrence as a sentencing consideration.

You are not to be penalised for your plea of not guilty. At the same time, the Court does not ignore the fact that by reason of that plea, the complainant was required to give evidence and

you are not able to call in aid any claim to remorse. In fact, the position you maintain is one of denial. That denial is presented in the face of overwhelmingly strong evidence of your guilt from the complainant, who, though seriously damaged by your behaviour was unshaken in cross-examination.

Having considered the matter, I have determined that a term of imprisonment is the only appropriate penalty which properly responds to the relevant sentencing considerations. The *Sentencing Act* requires me to have regard to the pattern of sentencing for offences such as this, though I observe that this is a relatively new offence. I can take account of the sentencing pattern which emerged in respect of its predecessor, being the offence of maintaining a sexual relationship with a young person.

In fixing penalty I have regard to the sentencing considerations to which I have referred, the matters pertinent to you, capably articulated by your counsel on your behalf, and the impact of your offending upon the complainant. Having regard to those matters I have determined that a sentence of five years' imprisonment is appropriate. That sentence will commence upon the date you were taken into custody of the conclusion of the trial. I further order that you not be eligible for parole until you have served half that sentence. Pursuant to the *Community Protection Offender Reporting Act* I order that your name be placed upon the register, for a period of ten years.

You are sentenced to five years' imprisonment. You will be eligible to apply for parole after you have served half of that sentence, that is 2 years and six months. The sentence commences on the date the trial ended, which was the date the jury found you guilty of the charge. You are to be placed upon the register for a period of ten years and you will have reporting obligations attaching to that registration.