

STATE OF TASMANIA v EMIEL VAN DIEPEN
COMMENTS ON PASSING SENTENCE

26 OCTOBER 2022
BRETT J

Mr Van Diepen, you have pleaded guilty to 6 counts of penetrative sexual abuse of a young person and 3 counts of indecent assault.

The crimes were committed over two separate occasions in 2019, against two sisters, aged 16 and 14. You met the older complainant through a social media application named SKOUT, described to me as a dating app. According to your counsel, you had been regularly using such applications since your first marriage broke up in 2012. You claim that first contact was made by the girl. You and she agreed to meet in a park late at night. A charge of grooming with intent to procure her for sexual abuse has not been proceeded with by the prosecution, so I will not determine sentence on the basis that your intention in coming to that agreement was to engage in sexual acts with her. However, when you met her at the park, she got into your car and you drove to another outdoor location. After arriving there, you commenced to sexually abuse her. The sexual abuse consisted of placing her hand onto your penis. You then removed her pants and your clothing and performed oral sex on her, which I infer, given the crime to which you have pleaded guilty in respect of this act, involved penetrating her vagina and/or genitalia. You then committed two separate acts of vaginal intercourse, after which you penetrated the complainant's mouth with your penis. This continued until you ejaculated. You then left the area in your car and the complainant walked home.

You were contacted the following day by the complainant's younger sister, aged 14. You were told that she was the older complainant's friend, and you were made aware of her age. You arranged to meet both girls at the same location. Once again, the prosecution has not proceeded with a charge of grooming in respect of the younger girl and, accordingly, I will proceed on the basis that at the time of making this arrangement, you did not have a positive intention of engaging in sexual acts with either girl. However, on this occasion, you were requested to bring alcohol to the meeting, and you complied with this request. You supplied this alcohol to the complainants prior to commencing sexual activity. I infer that at the time that you actually supplied the alcohol to them, you did so with the intention of facilitating the crimes which you then committed.

On this occasion, you placed the older girl's hand on your penis and had her masturbate you and perform oral sex on you. While this was happening, you put your hand down the top of the 14-year-old girl and touched her bare breasts. You then kissed her. You then asked the younger girl to perform oral sex on you, which she did and you thereby penetrated her mouth with your penis. This continued at your request until you ejaculated. On this occasion, your abuse of each complainant was perpetrated in the presence of the other. Once again, after you had finished committing these crimes, you drove away from the area, and the girls walked home.

You continued to communicate with both complainants for a short time after this, until the police became involved. During an interview with police, you admitted your conduct.

The material provided to me confirms that your crimes have had a significant psychological impact on both complainants. Both were extremely vulnerable, not just because of their age, but also because of pre-existing psychological conditions. The older complainant has been diagnosed with severe depressive and anxiety disorders and complex post-traumatic stress disorder. These are significant conditions, they are having a major effect on her health and she has spent long periods of time in hospital receiving psychiatric treatment for them. I infer that she suffered from these conditions before you committed these crimes, but her treating

psychiatrist expresses the opinion that the trauma she experienced as a result of your crimes has intensified these conditions and their traumatic symptoms. The younger complainant was diagnosed with a severe eating disorder shortly after these events, and has suffered bullying at school because of them. She is undergoing psychological counselling. Her psychologist opines that there is a significant link between the sexual abuse and her psychological conditions, in particular the eating disorders. This is not surprising. The very significant and long-term impact of sexual abuse on children is well known. The law prohibits sexual activity of this nature with children precisely because of the potential adverse impact of such activity. The fact that the girls apparently agreed to engage in this conduct with you is of no significance, they were not old enough or mature enough to make informed decisions about engaging in conduct such as this. You were 44 years of age when you committed these crimes. You were aware of the age of both girls. You were the adult and it was up to you to make lawful and protective decisions with respect to your interaction with these children. Far from complying with this responsibility, you abused their youth and vulnerability for your own sexual gratification. Notwithstanding that I must proceed on the basis that you did not engage in grooming behaviour, it is obvious that once you came into contact with them, you acted in a predatory and selfish way without any regard to their welfare. The fact that they were predisposed to significant impact from such conduct because of their pre-existing psychological state does not relieve you of responsibility for the consequences of your criminal conduct. If you decide to sexually abuse children, you must expect that this will harm them. It was reasonably foreseeable that children of this age would suffer significant and long-term harm as a result of conduct such as this. Further, the fact that their vulnerability might be exacerbated by pre-existing emotional or psychological difficulty was clearly foreseeable, and just as clearly of no interest to you.

The objective seriousness of these crimes and your moral culpability for them are aggravated by the age disparity, the fact that the conduct was repeated on the second occasion and its predatory nature. The involvement of the internet and social media in facilitating the contact between you and the complainants is also a matter of real concern. As I have already said, you will not be punished for grooming them, but the fact that you took advantage of the opportunity presented to you by the access so easily and covertly provided by that medium, is concerning, and in my view contributes to the need for an emphasis on general deterrence in this sentence. I am also required to take into account aggravating circumstances prescribed as such by statute, which in this case are that you committed the crimes on the second occasion on each girl in the presence of the other and that you supplied them with alcohol with the obvious intention of facilitating the commission of these crimes.

You are now 47 years of age. You have no prior convictions of significance. You have three children, including two from a former marriage and a child from your present marriage, who was born after the commission of these crimes. Your incarceration will cause significant hardship to your wife and child. You have a good industrial record, but in anticipation of this sentence, you have resigned from your employment. No criticism can be made of any aspect of your character, apart from your commission of these crimes, but that of course is not unusual in respect of people who commit crimes such as this. It affords little mitigation. The psychological report provided to me on your behalf indicates that there is nothing about your background or psychological or personality profile that explains your behaviour.

The only significant mitigating factor put forward by your counsel is your plea of guilty. You will receive some credit for the plea because it means that neither complainant will be required to go through the traumatic experience of giving evidence against you. However, the plea was

indicated only a couple of days before both complainants were expecting to give evidence at the special hearing. There has been significant delay in dealing with the proceedings which has been substantially contributed to by your equivocation as to a proposed plea of guilty, and the complainants have found the delay and the prospect of giving evidence very difficult. Of course you are not to be penalised for exercising your right to plead not guilty to these charges, but on the other hand the fact that the plea came so late in the proceedings reduces the utilitarian benefit of guilty plea. However, the fact that the girls will now not have to give evidence is of real significance and you will receive some mitigatory benefit for that decision.

The serious nature of these crimes and the aggravating features which have been discussed by me mean that the only possible sentence is a significant term of imprisonment. Having regard to your lack of prior convictions and your plea of guilty, I will provide for the possibility of release on parole at the earliest time permitted by the law.

Emiel Van Diepen, you are convicted of the crimes to which you have pleaded guilty and sentenced to a global term of imprisonment of two years and eight months. The sentence will take effect from the day you were remanded in custody which is 18 October 2022. You will not be eligible for parole until you have served one half of that sentence.

I am required to make an order under the *Community Protection (Offender Reporting) Act* 2005, unless I am satisfied that you do not pose a risk of committing a reportable offence in the future. Having regard to the circumstances of this case, I am not satisfied of that matter and, accordingly, must make an order. The maximum period of the order is for the rest of your life. Having regard to the predatory and serious nature of this conduct, I think that the risk is and will remain relatively significant for some time. Accordingly, I order that your name be placed on the register pursuant to that Act and that you comply with the reporting obligations under that Act for a period of 15 years.