

Nicholaas Ockert Bester, you have pleaded guilty to maintaining a sexual relationship with a young person between June 2010 and December 2010. The complainant was 15 years of age and you were 58 years of age. The complainant was born end of December in 1994. You were a senior teacher, Head of Maths and Science at St Michaels' Collegiate School and the complainant a student of the school in Grade 10.

The complainant had been taught by you in Grade 9 when she was in your Mathematics Extended class; she was a talented student. In Grade 9 the complainant was diagnosed with anorexia and was admitted to hospital for two weeks. After her discharge from hospital she was supported by medical professionals, including a psychologist and paediatrician, and the school was also engaged in providing support. She was making good progress until March 2010 when she suffered a relapse. The complainant sought help from a number of teachers at the school including you, and at that time you offered your office as a place she could go to.

In April 2010 the complainant attended a medical appointment and her mother took her to school afterwards. She missed being involved in a school outing and on her return was the only Grade 10 student on campus. The complainant spent the day in your office talking to you. She told you of her struggle with her eating disorder. The serious nature of her condition was disclosed to you.

Leading up to 23 April 2010 the complainant spent further time with you after school. She told her mother that she had been feeling down but talking to you was making her feel better. You had told her that you had learnt more from her than any other student in over 30 years of teaching. You had given her a key to your office and allowed her access to your office after hours. You told her that she could deal with her anorexia herself.

On 23 April the complainant was admitted to hospital for treatment for anorexia. The complainant contacted you from hospital, and you went to the hospital and tried to see her but were turned away by staff as she was not allowed visitors. The complainant's parents became concerned about you and your interaction with their daughter and a meeting was held at the school when they conveyed their concerns to senior staff. As a consequence you were told by the school that you were to have no contact with the complainant. You admitted that your behaviour had been inappropriate in allowing her access to your office, in terms of comments you had made, and in providing advice about her anorexia. You agreed to attend a meeting attended by the complainant and the principal when you would tell the complainant that your advice to her had been misguided and she needed to listen to her doctors and specialists. You did so on 3 May in the principal's office.

The following day the complainant brought a present to school for you and gave you a letter she had written. The letter conveys a number of things, but in particular her vulnerability and emotional fragility, her perception of you as a friend and support and that she felt respected by you.

On 18 June you spoke to the complainant and after a discussion about sketches of the complainant naked you asked her if you could see one. You told her that nudity was not sexual. She delivered a sketch to you.

About a week afterwards you asked the complainant to meet you in the school science lab during the evening at about 5.30pm. She did and you asked her, "How can I repay you for the sketch?". You then gave her two cards – one with "yes" and one with "no" and told her

you were going to undress. You asked her to go in another room and undress, which she did, leaving her underpants on. You asked her to place one of the cards under the door as to whether she would come out. Your expectation was clear to her. She put the "yes" card under the door feeling compelled to comply with your expectation. You were naked and you asked her to take off her underpants, which she did, and you held and kissed her.

You then established a false profile on Facebook so that you could communicate with the complainant without anyone knowing. You commenced regular communications with her by this medium and that continued for the duration of your criminal conduct.

The next incident occurred on a weekend in your office at the school when you pressed your naked penis against her body and performed oral intercourse on her. Not long after that date you made another arrangement to meet the complainant during the evening in your office when her parents thought she was going to the movies with her cousin. Your intention was to have sexual intercourse with her. She had told you about her inexperience in such matters, hoping to deter you. You were not deterred. You provided her with alcohol and then you had vaginal sexual intercourse with her. Afterwards you drove her to the cinema and dropped her off there in an intoxicated state. The next day she went to her Year 10 formal and you attended as a supervisor.

I note that the complainant's parents had reinforced to their daughter the importance of not consuming alcohol at such a young age, a message that the school had reinforced as well.

You had intercourse with the complainant on a regular basis over the following months until December 2010. Sexual intercourse occurred on approximately 20-30 occasions. On a few occasions during the course of the relationship you had unprotected sex with her.

Sexual intercourse often occurred at the school, before or after school, or on weekends in places such as your office. During the month of October you met the complainant at a house in West Hobart where you had sexual intercourse with her. A friend had given you a key to his house while he was in hospital.

You told the complainant that if you were seen together for her to say she was your daughter. On one occasion you were seen by a teacher outside where the complainant worked. Concerns were raised and you made a false excuse about why you were there.

On the 10 November you booked a room at a city hotel and arranged to meet the complainant at the hotel after school. The complainant told her parents she was going to yoga. You arranged to pick her up in Molle Street where you provided her with a hooded jacket which you asked her to put on to avoid being recognised. At the hotel you had vaginal sexual intercourse with her on two occasions. Afterwards you dropped her near her yoga class so she could be collected. The jacket was worn on other occasions by the complainant when she was in the car with you. There were further occasions of sexual contact at the school before the complainant ended the relationship on 13 December 2010.

The complainant reluctantly participated in the sexual relationship. I accept that she did not express her reluctance to you. Indeed, there were times when she conveyed an interest in you and the relationship continuing because she knew that was what you wanted to hear. By virtue of the relationship, she found herself in a situation which isolated her from her other supports, in which she felt trapped and she did not know how to extricate herself.

During the course of the relationship she found it increasingly difficult to cope with the situation. She felt angry at herself for allowing it to happen and was self-harming. She was depressed and had problems sleeping. Her parents were extremely worried about her.

In mid-April 2011, she disclosed to the school and her parents what had been happening. Your employment was terminated. When confronted by the complainant's father about what had been happening you ultimately said you did not deny it, but said to him, "She wanted it".

You were interviewed by police in April. You admitted the sexual relationship and accepted responsibility for it. You agreed she was vulnerable in terms of her mental health and that you had taken advantage of her.

The complainant has provided a victim impact statement which details her suffering throughout the relationship and since. The damage it has caused many aspects of her life, family and peer relationships and sense of self-worth is profound. As an outstanding student her motivation for study has been significantly undermined. She feels guilt and shame as well as responsible for the effect upon her family. It is well known that such feelings of guilt and shame are typically felt by victims of this sort of crime, *Crowley v R* [2003] TASSC 147, per Evans J, at paragraph 22. It is hoped that she will come to realise that as a 15 year old child she was not to blame in any way for what occurred. Her parents are understandably devastated by their daughter's suffering.

The Court's experience would suggest that the effects of such conduct may be lasting and affect many aspects of the complainant's life for years to come.

When the police searched your home they seized your computer and discovered 28 child exploitation images. They ranged from images depicting children naked in sexual poses, to children engaging in vaginal and oral intercourse with adults. According to the scale set out in *R v Oliver* (2003) 1 Cr App R 28, there were four images or movies that fell into category 1 involving sexual posing, 15 images or movies in category 2 involving sexual activity between children, or solo masturbation by a child, one in category 3 depicting non-penetrative sexual activity between adults and children, and nine in category 4 involving images or movies depicting penetrative sexual activity between children and adults. The images were kept on your home computer. I note they had not been distributed to any other person. You had downloaded them from the internet and you had not paid for them. There was minimal prospect of any other person having access to them. It has often been said that the downloading of such material provides a market for those who produce it. The production of such material involves exploitation and corruption of children. For this reason, the mere possession of such material is viewed very seriously and deterrence is a dominant consideration. I am conscious that most cases that have come before this Court have concerned considerably greater quantities of material than in this case.

Your criminal conduct has had a completely destructive effect on your own life. It has destroyed your marriage, your relationship with your adult children and your career as a well respected and experienced senior teacher. Your financial situation is now very difficult. You have struggled to cope with the enormity of the ramifications of your conduct, and you were admitted to hospital soon after your conduct came to light in a state of severe anxiety and depressed mood. You remained an inpatient for most of the period until you were remanded in custody last month. I note the reference in the medical reports to the fact that you have had a low-grade depressive illness for a number of years.

You have no relevant prior convictions. You deeply regret the sexual relationship. You are very appreciative of the significant impact of it on the complainant and her family. You have pleaded guilty and indicated that plea of guilty at an early stage. You are entitled to a reduced sentence for saving the complainant the considerable stress and trauma she would have experienced in giving evidence. I am conscious of the complainant's age and that there have been other cases before the courts involving younger complainants. I am conscious also that you did not realise that she was unwilling during the sexual relationship.

Nonetheless, I consider this is a serious case of its kind:

- It involved a grave breach of trust. You held a position of trust as a teacher of the school where the complainant attended. There was another dimension to your position of trust; you offered her support and friendship when she turned to you for help. You deliberately chose to initiate a sexual relationship betraying that trust. In doing so, you ignored representations made by her worried parents and the clear direction from your employer, the school, to have no contact with her. You betrayed the trust of the child's parents and the school's trust in an utterly blatant fashion.
- Further, it is obvious that all 15 year old children are vulnerable and ill equipped to protect themselves from sexual advances from a teacher in a school environment. The complainant in this case was particularly vulnerable given her mental state. You knew her psychological condition was precarious. When you initiated the sexual relationship she had recently been discharged from hospital and she had a team of health professionals caring for her, and you were well aware of that.
- The substantial age difference is another aspect of the situation that should have made you appreciate the wrongfulness of your conduct.
- I note too your repetition of acts of sexual intercourse over a period of six months, and that the continuation of the relationship involved a considerable level of subterfuge and deception.
- Further, the devastating effect of your conduct on the complainant.

The sentence must reflect the serious nature of this crime, it must condemn such conduct and be effective as a deterrent to others. For the crime of maintaining a sexual relationship with a young person I consider a sentence of two years and six months' imprisonment to be required. If not for your plea of guilty, a sentence of more than three years would have been imposed. For the possession of child exploitation material I consider a sentence of four months' imprisonment is warranted. That sentence has been reduced noting the totality of the sentence imposed today.

The orders I make are as follows:

- 1 I record convictions.
- 2 I impose two years and ten months' imprisonment backdated to 18 July 2011.
- 3 I impose the minimum non parole period.
- 4 It is ordered that the Registrar place your name on the Community Protection Offender Register and that you comply with the reporting obligations under the Community Protection (Offender Reporting) Act for eight years after your release.
- 5 I make a forfeiture order with respect to the accused's computer desktop tower referred to in Tasmania Police property receipt 84196.

I make the usual victims of crime compensation levy.