

The defendant, now aged 64 years old, was found guilty by a jury on 30 September 2022, of the crime of persistent abuse of a child.

The complainant is a male person who was in the defendant's care from age five and who was raped and sexually assaulted by the defendant on multiple occasions at Port Arthur and at Hobart between 1995 and 2005 when the complainant was between five and 14 years of age.

For the crime of persistent sexual abuse of a child, it is not necessary that the prosecution proves the dates on which any of the unlawful sexual acts were committed, or the exact circumstances in which any of the unlawful sexual acts were committed.

Children who are victims of such offences are frequently unable to give particulars of each and every sexual act during a period of prolonged offending. The State has listed the specific sexual acts it was able to identify, but the defendant may be sentenced on the basis that each specific act is part of a course of conduct involving other, sometimes many other, unspecified acts.

The seven occasions specified by the Crown in this case, and left to the jury are as follows.

Occasion 1

In the bedroom at the accused's house in Port Arthur.

- 1 Masturbating the complainant.

Occasion 2

In the bedroom at the accused's house in Port Arthur.

- 1 Masturbating the complainant; and
- 2 Sucking his penis until it bled.

Occasion 3

In the bedroom and lounge room at the accused's house in Port Arthur.

- 1 Masturbating the complainant.
- 2 Making the complainant masturbate him.
- 3 Penetrating the complainant's anus with his penis while holding the complainant over a couch.

Occasions 4-7

- 1 Masturbating the complainant.
- 2 Making the complainant masturbate him.

3 Sucking the complainant's penis.

To have returned a verdict of guilty the jury needed to be satisfied beyond reasonable doubt that at least three of those unlawful sexual assaults occurred, but not necessarily the same three.

It falls to me to find the factual basis of the jury's verdict. I am satisfied beyond reasonable doubt of the truth and reliability of the complainant's evidence and I am satisfied beyond reasonable doubt that each of the sexual acts on each of the seven occasions left to the jury occurred as described by the complainant and that they occurred against a background of tens if not hundreds of similar sexual assaults (not including anal rape) over a period of 10 years.

As one of my fellow judges has said, this crime, by its nature, applies to a wide range of sexual offences and consequently there is no discernible sentencing range. The defendant should suffer the same penalty as would have been imposed if the individual sexual acts constituting the crime had been charged as separate crimes, such that the sentence is a just and appropriate measure of the defendant's total criminality. The total aggregate sentence is to be moderated by proportionality and totality.

Child sexual offences have enormous potential to cause physical and psychological harm. Conduct of this nature has profound and deleterious physical and psychological effects on victims for many years, if not for the whole of their lives. The consequences of an offence, including its effect on a victim, are important considerations in the sentencing process, and the severity of the sentence may be increased because of them. This is a serious example of this offence, given the egregious breach of trust involved and the number of sexual assaults and the length of the period over which they occurred and the violent background against which they were committed. I do not lose sight of the statutory aggravating considerations to be taken into account.

I have had a Victim Impact Statement read to me by Counsel for the State. Put simply, the complainant's life has been ruined, possibly irretrievably destroyed notwithstanding the complainant's perception of a bright future, destroyed by the defendant's unbridled lust and his despicable disregard of the quality of another human being's safety and physical and mental welfare. Ruined to the point of the complainant giving up on learning at school and ultimately attempting to take his own life.

General deterrence, punishment, vindication of the victim and community protection are the primary sentencing factors.

I am satisfied due to his failing health and lack of mobility that the defendant poses no risk of re-offending. I make no order under the *Community Protection (Offender Reporting) Act 2005*.

I am fully cognisant of the defendant's advanced age and his state of health. This may be regarded as mitigatory although old age as a sentencing consideration must be largely suborned to the very serious and repeated nature of the offending in this case. I do not overlook that each year of my sentence represents a substantial proportion of the remainder of the defendant's life.

The defendant is a very sick man. I have seen the records of his General Practitioner, which sets out the list of medications he has been taking and the physical illnesses he has, namely:

Osteoarthritis;
 Type 2 Diabetes;
 An immune system disorder known as Graves' Disease;
 Ischaemic Heart Disease; and
 Chronic obstructive pulmonary disease.

I am informed by a letter from Correctional Health Services that since being incarcerated, the defendant has spent nearly all of this time in the prison hospital because of what the doctor says are "his extraordinary high care needs." For example, his prison hospital records show that he requires daily care for toiletry needs. He was transferred to inpatient care from high risk prisoner accommodation the day after he was remanded in custody, namely 1 October 2022 after a remand on 30 October 2022.

Counsel for the defendant, Mr Barnes SC submits that as King CJ said in *R v Smith* (1987) 44 SASR 587, 589:

"Generally speaking, ill health will be a factor tending to mitigate punishment only when it appears that imprisonment will be a greater burden on the offender by reason of his state of health or when there is a serious risk of imprisonment having a gravely adverse effect on the offender's health."

However, King CJ had preceded that statement of principle by setting out another, namely;

"The state of health of an offender is always relevant to the consideration of the appropriate sentence for the offender. The courts, however, must be cautious as to the influence which they allow this factor to have upon the sentencing process. Ill health cannot be allowed to become a licence to commit crime, nor can offenders generally expect to escape punishment because of the condition of their health. It is the responsibility of the Correctional Services authorities to provide appropriate care and treatment for sick prisoners."

I note that the defendant was capable of being able to live at home with a carer prior to his incarceration and not in hospital, although, given the extent of the clinical care given to him in the prison hospital it is difficult to predict as to how long that might have continued to be the case. He could not ambulate and needed assistance in bathing, showering, toileting and dressing before he was remanded in custody and although he was taking and using a large number of medications, he reported that he did not personally know why he took many of them or what they were for.

Nonetheless, prison will be a greater burden on the defendant as a result of the apparent need for his hospitalisation there, for however long that situation may endure. I take that into account in sentencing.

I also take into account the fear of by, and the risk to, the defendant of contracting Covid- 19 in the prison environment, particularly given his co-morbid health conditions of

ischaemic heart disease, Graves' disease and chronic obstructive pulmonary disease.

The defendant is convicted of persistent sexual abuse of a child and is sentenced to a period of nine years' imprisonment. He is not to be eligible for parole until he has served half of that sentence.