

Mr Heteby, you have pleaded guilty to five counts of penetrative sexual abuse of a child. These crimes were committed over the period of a few weeks in December 2020. The child concerned was 12 years of age, and you were 24 years old at the time. You met her on a social media site, Grinda, which I am told is a site which specifically caters for adults who wish to meet for the purpose of sexual activity. Your counsel tells me that you joined this site at a low point in your life. You were depressed and otherwise psychologically vulnerable because of circumstances in your life at that time, which included uncertainty about your sexuality and general feelings of worthlessness and hopelessness. After establishing a connection through the website, you and the complainant met on at least five separate occasions over a period of between two and four weeks, specifically for the purpose of engaging in sexual activity. The sexual acts took place in a secluded public location. On each of the first two occasions, you penetrated the complainant's mouth with your penis and on the last three occasions, you engaged in vaginal intercourse with her. Each sexual act occurred with her actual consent, although having regard to her age, she was not old enough to lawfully consent, nor sufficiently mature to effectively consent, to the sexual acts.

It is accepted by the prosecution that on the first four occasions, you believed that the complainant was at least 18 years of age. Because she was in fact under 13, your mistaken belief as to her age does not excuse your criminal conduct. In any event, it is doubtful that you took reasonable steps to ascertain her age. It is accepted that her profile on the website states that she is at least 18. The prosecution also accepts that she looks significantly older than her actual age and her conversation with you suggested a level of sophistication consistent with her purported age. You told police that you had some reservations about her age, because of her manner of dressing and speaking. You did ask to look at her ID, but she denied having one. At some point during the commission of these crimes, you looked up her mother's Facebook profile and worked out that she must have been younger than her asserted age. You thought she was somewhere between 13 and 17. Prior to committing the fifth crime, you discussed your concerns with her and she told you her real age. You engaged in the final act of sexual intercourse after she told you this. However, you experienced remorse soon after committing this act, and put an end to any further contact with her.

You are now 27 years of age. You have no prior convictions at all. I have received a psychiatric report which indicates that you have a very low IQ, placing you in the region of a borderline intellectual disability, with particular deficits in working memory and processing speed. You also have a history of depression, which has been contributed to by bullying during your schooling, uncertainty about your sexuality and long term conflict within your family. The psychiatrist described you as a "somewhat immature emotionally fragile individual". From an employment perspective, after leaving school, you gained qualifications in age and disability care and have worked as a disability support worker. However, you lost that employment when these charges came to light and it is almost certain that you will now be permanently excluded from employment in that field. You have tried to find work in the hospitality area but have been unsuccessful.

There is no question that this was very serious offending. The complainant was a child, and although she purported to act in an older and more mature way, and had clearly joined this website to seek out sexual encounters, she is entitled to the protection of the law, including from

her own poor and immature choices. She has chosen not to provide a victim impact statement, but there is a high probability that the sexual activity which constituted these crimes will have a significant and long-lasting adverse impact upon her. These crimes occurred at an important stage in her emotional and psychological development. The law recognises the high potential of harm resulting from such abuse, and seeks to protect children from that harm. General deterrence is an important sentencing consideration.

As far as your personal moral culpability is concerned, having regard to the concessions made by the prosecution, it can be accepted that some mitigation is available to you in respect of the first four sexual acts. However, that mitigation is limited because although you had some basis for a belief that she was of legal age, it is clear that you also had some uncertainty about this, and quite frankly, your efforts to resolve that uncertainty were half-hearted at best. Further, the mitigation does not apply at all to the last act of sexual intercourse. It is clear that you committed this crime with full knowledge of the complainant's age. Your moral culpability for this act, in particular, is very high.

It is in your favour that after the fifth occasion, you unilaterally put an end to the criminal conduct. Further, when you were questioned by police you co-operated fully with them, including by making concessions about matters which would otherwise have been difficult for them to prove. You have entered an early plea of guilty, which is consistent with your stated remorse and also has considerable utilitarian benefit.

I must say that I found this to be a difficult sentencing exercise. There is a clear need to denounce your conduct, and impose punishment which will act as a deterrent to others. On the other hand, I take into account your lack of prior convictions, your limited intellectual and social functioning, and your genuine remorse. In the end, after balancing these considerations, I have decided that although a sentence of imprisonment must be imposed, it is appropriate to give you an opportunity to avoid actually serving the sentence in prison. Accordingly, I intend to wholly suspend the sentence, but will do so on condition that you undergo a period of supervision and perform some community service. The purpose of the latter is to ensure that you experience some actual punishment.

The orders I make are as follows:

- You are convicted of the crimes to which you have pleaded guilty;
- You are sentenced to a global term of 15 months' imprisonment, all of which will be suspended for a period of 30 months on the following conditions:
 - a) Firstly, that you are not to commit another offence punishable by imprisonment during that period.
 - b) Secondly, that you will be subject to the supervision of a probation officer. You must comply with this condition for a period of 12 months. That period will commence from today. The court notes that the conditions referred to in s 24 (5B) of the *Sentencing Act* apply to this condition. These include that you must report to a probation officer within three clear days of today. In addition to the core conditions, the order shall also include the following special conditions:

you must, during the operational period of the order,

- (i) attend educational and other programs as directed by the court or a probation officer;
 - (ii) submit to the supervision of a probation officer as required by the probation officer;
 - (iii) submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer;
- c) The third condition is that you will perform community service for a period of 140 hours. The court notes that the sections referred to in s 24 (5A) of the *Sentencing Act* apply to this condition. For the purpose of these provisions:
- (i) you must report to a probation officer at the office of Community Corrections in Hobart within three clear days of today and
 - (ii) the operational period of the order is 30 months.

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, and the assessment made by Community Corrections, I am not satisfied of that matter and, accordingly, must make an order. 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 eight years.