

KLS is to be sentenced for two counts of persistent sexual abuse of a child (or young person). In relation to count one concerning a child, referred to as NP, he pleaded not guilty, and after a trial a jury found him guilty. He pleaded guilty to count 2, concerning the complainant, referred to as JT, his daughter.

The charges concern two discrete periods of criminal conduct separated by approximately 10 years. Charge one concerns the period 1 January 2002 to 1 October 2005 when NP was approximately 10 years of age to 13 years of age. The defendant was 26 to 30 years of age. He was her brother by adoption. The complainant had been adopted by a couple when she was three. Her mother had two young brothers approximately the complainant's age whom the complainant regarded as her siblings. The defendant was her adopted mother's biological son and not part of the family unit until he commenced living with the family as an adult, when the complainant was approximately 9 years of age.

Charge two involves sexual abuse of his daughter during a period from 15 October 2016 to 1 February 2019 when his daughter was aged 11 to 13 years of age and the defendant was aged 41 to 43 years of age.

I turn first to count one. As noted the defendant pleaded not guilty to this count. To find the defendant guilty, the jury needed to be satisfied beyond reasonable doubt that he committed an unlawful sexual act on at least three separate occasions. NP gave evidence of seven specific occasions involving sexual acts. Having regard to her evidence and all the evidence on the trial I am satisfied beyond reasonable doubt that all seven occasions occurred as she described in her evidence against a background of many other similar acts of abuse, which I accept occurred as she described in her evidence. The seven specific occasions involved three crimes of indecent act with a child or young person and four acts of indecent assault.

By way of background, when the defendant began living with the family, living quarters were created for him in the shed on the property. It was arranged that the complainant would do exercises after school in the shed after the defendant had said to her mother that the complainant could use the treadmill and the exercise bike that were in the shed. This exercise routine was a ruse maintained by the defendant. Once the complainant was inside the shed he would lock the door and direct her to touch his penis and masturbate his penis, on most occasions until he ejaculated. The complainant was about 10 years of age when this first occurred. From then on, he offended in this way almost every day after the children caught the bus home from school. On some occasions the defendant would be the only adult with the children but often her parents were at home. The complainant's mother would remind her after school of her exercise routine and that it was time to go to the shed to do her exercises. When the complainant expressed reluctance or resisted going, her mother would reinforce the need for her to go and do her exercises.

The first occasion involves the crime of indecent act with a child or young person. This was the first time that the defendant sexually assaulted the complainant. The complainant was in the shed and she had to do situps. The defendant was sitting on the floor and he pulled his pants down and he directed her to hold his erect penis and go backwards and forwards. She had to do this until he ejaculated. Then he said that, she could go now and she ran out of the shed. She tried to tell her mother but she would not listen.

The second occasion involves indecent assault. During a game of hide and seek or chasings the defendant grabbed her and gave her a bear hug and pushed her against a wall and tried to kiss her on the lips. Her mother walked around the corner and said to the defendant, "Don't even bother going there".

The third occasion involves the crime of indecent act with a child or young person. While the complainant was in the shed using the exercise bike for the first time, the defendant stood beside her and she had to hold onto the exercise bike with one hand and masturbate his penis with her other hand until he ejaculated.

The fourth occasion involved indecent act with a child or young person. The complainant was sitting on the exercise bike and the defendant was getting her to masturbate his penis. He required her to do this on other occasions but what was distinctive about this occasion was that someone was banging on the shed door wanting to come in, and the defendant responded stating, no one was allowed in while she was doing her exercises, "otherwise she won't do them".

The fifth occasion involved the crime of indecent assault. On this occasion, the complainant had asked her brother N to come with her to the shed while she did her exercises. The defendant would not let him into the shed and slammed the door and locked it so N could not get in. The defendant wanted a coffee, and as she turned the jug on he pushed himself up against her and said that she needed to play with his "dick". She turned her body sideways and said no. He pushed his chest up against her and she then fled, unlocking the door and running back to the house to her bedroom.

The sixth occasion involved an indecent assault when she was inside the house and he touched her to the area of her genitalia over her clothing.

Occasion 7 involved the crime of indecent assault and happened inside the house in the complainant's bedroom. She was lying on her bed in her bedroom reading a book. Her parents were not at home and the defendant was looking after the children. He entered her room and told her she had to go and do her exercises now. She refused saying she did not want to do them. He tried to remove her trousers and he pulled them part way down. There was a noise and he quickly moved away from her and pretended to talk to her as if nothing had happened. He stood there while her brother walked past the open bedroom door. Because her brother was inside the house the defendant then left her alone.

The defendant's conduct in the shed involving him requiring the complainant to masturbate his penis happened on a routine basis after school. After one of the occasions, he told her that she could not tell anyone what was happening, "because I'll get in lots of trouble for this".

The defendant is to be sentenced with respect to the specific occasions and not the uncharged conduct. However, the uncharged conduct is revealing about his moral culpability and responsibility with respect to the seven specific occasions. Also, he is not someone who can assert that these were isolated occasions.

For this crime, a defendant should receive a sentence that reflects the sentence he would have received if charged with the specific occasions which fall within the charge, allowing for the fact that he is being sentenced for a number of incidents and thus it is necessary to check that the sentence that is imposed is proportionate, in other words, it justly reflects the totality of the his conduct and is tempered to reflect a course of conduct.

The offending stopped when the complainant was approximately 13 years of age and the defendant commenced a relationship. He told the complainant's mother that the complainant didn't need to do exercises anymore. Later, he moved out of the family home.

There were occasions when the complainant tried to tell her mother what the defendant was doing. On one occasion the complainant was punished and told never to say that again. When she was 19 years of age she told her boyfriend and later, in May of 2019 she disclosed to the police what the defendant had done.

The complainant's victim impact statement reveals that the sexual abuse has had a lasting and devastating impact on her life.

When the abuse commenced she stopped enjoying school and began getting into trouble. It hurt to see children playing happily, realising how different she was, and knowing that she would never be like them. She became timid and felt worthless. She explains that it was like the sexual abuse had broken her from being able to be her own age and make friends. The emotional and psychological impact has continued and affects many aspects of her life including her relationships and her parenting of her own children. She describes that it has ruined her mental health. At times she has felt that she cannot continue. She has breakdowns and flashbacks. She feels unsafe even in her own house.

The effects of the abuse upon the complainant are entirely consistent with the court's understanding of the long-standing, often life-long effects, upon child victims of sexual abuse such as this. As I said recently in another case, the court knows that child victims of sexual crimes will almost invariably suffer lasting and pervasive emotional harm, often for all of their lives. They may never reach their full potential, their self-esteem and confidence adversely impacted and relationships are often impaired.

Count 2 concerns JT. There are five specific occasions in a context of many unspecified occasions of a similar nature and other sexual behaviour. The defendant ultimately pleaded guilty to this charge and all conduct is admitted.

JT is the defendant's eldest biological daughter. The defendant and the complainant's mother separated in approximately 2012. They shared custody of their four children. The children would go to the defendant's home on Thursdays after school and return to their mother on Sundays. During these visits the complainant was treated differently to her siblings. The defendant showed her favouritism but was controlling, he would not allow her to stay elsewhere when she requested to, and she was punished for having a boyfriend when her sister was not.

At first, it was anticipated that the defendant's daughters would share a bedroom at the defendant's home and the defendant and his son would sleep in their own rooms. However, on most occasions that the children stayed, the children and the defendant would all sleep in the lounge room. The defendant slept on a mattress on the floor and the children would sleep on mattresses or recliner chairs.

From the outset of the custody arrangement the defendant told JT that he required her to sleep on the mattress with him. He told her that suffered from back pain and her presence on the mattress and her lying on parts of his body assisted with the pain. He made her lie across his chest or stomach area, with her head close to the waistband of his pyjamas.

On occasions, JT would go to sleep elsewhere, the defendant would move her onto the mattress once she had fallen asleep and place her head onto his stomach.

JT did not want to sleep with the defendant but when she told him she did not want to sleep on the mattress, he engaged in manipulative behaviour. For example, on one occasion he hit himself to the face with a heater, to demonstrate that he was in significant pain, and to pressure her to sleep on the mattress with him.

Once the complainant was sleeping on the mattress, the defendant commenced a course of inappropriate contact with the complainant. The defendant told her at times to remove her trousers, on other occasions she would go to sleep with her trousers on and wake to find them removed. He gradually escalated the seriousness of his conduct, progressing to the crimes of rape by oral penetration and indecent assault. The complainant would try to stay awake all night because did not feel safe.

The inappropriate contact commenced with touching her to the upper body. Sometimes, while she was on her side, he held her across her upper body from behind, preventing her from moving from the mattress, sometimes, she woke to find her bra had been lifted and her breasts were exposed.

Later, the defendant began to expose his penis above the waist band of his trousers near the complainant's face. He first exposed his penis when she was 11 and her friend was sleeping in the lounge room with JT's sister. The complainant woke during the night to find his erect penis next to her face and she was lying on his stomach. She was scared and tried to move away. She acted as if nothing had happened as she thought that the defendant may have been asleep. This conduct of exposing his penis close to face was repeated on multiple occasions. It is uncharged conduct but relevant context and bears on his culpability as a course of grooming behaviour, starting with ambiguous behaviour that could be explained away. It was a persistent and determined course of conduct with his purpose that she accommodate a gradual escalation of sexual abuse.

The complainant began to realise that it was not happening as he slept but she did not wish to believe he was doing this to her as he was her father.

The defendant's behaviour escalated and he began placing his penis into her mouth. If JT attempted to move away from the defendant or look at him, he would quickly close his eyes, pretending to be asleep.

Later in the indictment period, his conduct involved licking her to her genitalia. He would remove her trousers, lie between her legs, and lick her to her external genitalia. There was no penetration of her vagina.

The unlawful sexual assaults commenced when JT was aged 11. They became frequent and he would abuse her most weekends that she stayed on at least one occasion. They continued until February 2019 when the complainant was aged 13. There were periods when another adult was staying at the house and during these periods he did not offend.

At first, the complainant did not realise that the arrangement of sleeping with her father and his acts were not normal. After sex education classes, she realised that his acts were sexual in nature.

There are five specific occasions of sexual abuse relied upon for which the defendant is to be sentenced.

Occasion one involves an oral rape when the complainant was 12 or 13 years of age on an occasion when her cousin was staying for the weekend. There was a plan for the defendant to take them to Risdon Brook Dam to ride their bikes. They had watched a movie and were going

to sleep on the couch in the lounge room. The defendant told the complainant that if she did not come and sleep with him on the mattress they would not be going to Risdon Brook dam the following day as planned. The complainant complied as the children had been looking forward to the excursion. She fell asleep and woke up with the defendant's penis near her face. She fell back asleep and woke a second time with his penis in her mouth. She described that it tasted and smelt bad. She looked at him and he closed his eyes as if faking being asleep. She moved away and rolled over onto her other side and he said, "stop", "don't move". The next morning she woke up and found she was on his stomach.

The second occasion includes rape by oral penetration. On another occasion, on the mattress at night time, the defendant repeatedly put his penis into her mouth, she moved away, but he placed his penis into her mouth again. She felt pure disgust. She woke again to find the defendant between her legs, licking her to the genitalia.

The third occasion involves an indecent assault. When the complainant was approximately 12 years of age, in either grade 6 or 7 at school, she woke to find semen on her face, around her mouth and some in her mouth and the defendant's penis next to her face. There was "stuff" in her mouth which tasted really weird and disgusting and she could be sure that the defendant had ejaculated on this occasion.

She fell back to sleep and when she woke again, the semen had been cleaned from her face. This had happened on a school night and she felt very tired the next day at school. She described this as the worst occasion.

The fourth specific occasion involves an indecent assault. The complainant woke up and the defendant was licking her to the genitalia. She pushed him away and he desisted.

The fifth and final specific occasion happened in January 2019 and involved rape by oral penetration. She was sleeping in the lounge room and lying on the defendant's stomach, as was expected of her. She woke and saw his penis coming out from the top of his pants. She fell back to sleep and woke up again with his penis in her mouth, which penetrated her mouth fully and she felt it toward the back of her cheek. She described it as feeling "horrible". She tried to move away but he moved her back. She moved away, pretending that she needed to go to the toilet.

The next night she asked to sleep in his bedroom and the defendant allowed her to do that. During the night he came into the bedroom and made a lot of noise to try and wake her. Because she would not sleep with him, he stayed up all night in the kitchen. She also sat up and would not go back to bed because she did not trust him.

These acts of sexual abuse involving inserting his penis into her mouth and licking her genitalia occurred on many occasions during the period from when she was 11 to 13 years of age. His conduct of licking her genitalia occurred on approximately 15 occasions.

The repetition of his conduct is taken into account as revealing his moral culpability and his determination to continue his sexual abuse of the complainant. He knew that the complainant did not want to engage in this conduct, he knew the emotional pressure that he had applied and with that knowledge he engaged in five specific occasions of abuse. It is not a case where the specific occasions are isolated acts.

Aspects of the situation came to the attention of the police in early 2019. The complainant spoke to police in February 2019 and described the sleeping arrangements and feeling uncomfortable. The children were not returned to his care and Child Safety Services was notified.

The defendant discovered that the complainant had made allegations against him and he told family members that "it would not happen again" and "I'll stop". He said he would put a lock on the door and when asked why, he responded that it would stop him from getting in.

He sent her emotionally manipulative Facebook messages from 3 February 2019 informing her he was in hospital and that "no one cared", asking to talk to her, and saying it was unfair on the other kids that they could not see him.

The complainant disclosed the conduct in December 2019 to her boyfriend and her mother. She has not told her mother the full details and she explained to the Court that that was in order to protect her because her mother was blaming herself for what had happened. In the following month she made a video statement to police in which she disclosed the sexual abuse.

In May 2019, before the complainant's disclosures in early 2020, the defendant participated in a video recorded interview in which he told police that the complainant wanted to sleep on a mattress beside him and that he let her. She has removed her pyjama pants while sleeping there and he admitted he may have encouraged her to do that. He said he understood she did not want to sleep there anymore and he had told her she did not have to.

The defendant was charged in February 2020 and the current indictment was filed in February 2021. In November 2021, an order was made for the pre-recording of JT's evidence and that hearing was held on 2 March 2022. After her evidence in chief, and before cross-examination commenced, he pleaded guilty to the charge.

Aggravating circumstances for the purpose of s 11A of the *Sentencing Act*, include that the complainant, his daughter, was under his care, supervision and authority. The course of offending commenced when she was under 13. The offending occurred in the presence of others who were sleeping in the lounge room, although there is no suggestion that they were aware of the sexual abuse. Still, he exposed his own children to the risk of being aware that he was sexually abusing their sister and the psychological disturbing implications of that awareness, and the disturbing implications of that risk for his daughter.

The complainant has provided a victim impact statement which reveal the psychological and emotional effects of the abuse that pervade her school, work and home life. Physical contact with people is particularly difficult. She gets anxious and has panic attacks. Her sleep is compromised because she suffers nightmares and is always tired. She is doing her very best and countering her anxiety and panic attacks by keeping occupied with study and work.

The defendant is now aged 48. He has no relevant prior convictions. He suffers from a number of health issues. He has a stomach condition and has been hospitalised for that condition. He has difficulty eating and keeping food down, feels physically unwell and has stomach pains. He also has a neurological condition and suffers from regular headaches. Both conditions need assessment by a specialist and this has proved to be difficult because he is in custody. Since he has been remanded in custody, there have been a significant number of lockdowns due to COVID restrictions and reduced staff within the prison.

I assume that while serving his sentences he will receive the medical assessment and treatment he requires. I do accept that because of his conditions, imprisonment will be more stressful and onerous than for prisoners in sound physical health.

His plea of guilty to count 2 is noted but, as I have pointed out, it was very late and took place after the complainant's evidence in chief at the pre-recording of her evidence. While she did have to give evidence, his plea of guilty meant she was saved the added stress of cross-examination. I will allow a discount of 10% with respect to the sentence on this count for his

plea of guilty, reflecting the utilitarian benefit of that plea and his acceptance of guilt and acknowledgment of wrong-doing which vindicates the complainant.

As a result of his criminal conduct on count 2, his relationship with his children is totally destroyed and so is his relationship with his ex-partner. That is inevitable given the appalling nature of the crime he has committed upon his own daughter and his callous disregard for her.

His conduct in relation to count 1 was committed as an adult sibling and in a position of authority when he was trusted to supervise the complainant. I note her age for the purpose of s 11A and that she was also younger than 13 when the conduct commenced. He asserted that authority in abusing her. He was devious in maintaining an innocent reason for him to spend time with her, alone away from the family, and then he proceeded to abuse her routinely causing her terrible harm. His conduct was brazen, occurring within the family environment and when the child's parents were often in proximity, on the property. He acted with complete disregard for her wishes, and her attempts to avoid him and his sexual abuse. He was well aware that she was not a willing participant. The sexual conduct on this count was of a nature that would necessarily be emotionally and psychologically traumatic and disturbing. An essential requirement is that the sentence must be proportionate to his criminal conduct and I take into account the extent of his conduct, noting that it did not escalate and did not involve penetrative abuse.

As the father of the complainant on count 2, his breach of trust was profound. As her father, she was entrusted in his care, his duty was to look after her, nurture and protect her. He exploited her innocence and trust. He abused his own daughter without any apparent concern for the harm he was causing her and the depraved conduct he was subjecting her to. He had plenty of time to reflect on his criminal conduct and to desist. Instead he continued with the care and sleeping arrangements, deliberately placing her in danger and at his disposal, sexually abusing her repeatedly.

I have commented on the background conduct and the way in which he groomed his daughter revealing that each of the five occasions was the product of his fixed and long-standing determination to sexually abuse her. Much of his conduct occurred when she was sleeping and defenceless and when it was entirely obvious that she was not consenting and could not consent and her previous responses and conduct had revealed to him that she was not a willing participant.

On both charges his criminal culpability for each of the specific occasions is very high.

There is little if anything that reduces that criminal and moral responsibility on the two charges. He was very well aware of his wrongdoing and how it would be viewed by others. He has expressed no remorse and appears self-pitying. He engaged in manipulative and deceptive behaviour to enable his offending. After his offending with his daughter he continued to manipulate her emotionally to pressure her into silence. I will allow for the fact that he may develop insight and understanding of the harm he has inflicted particularly if he participates in sex offender programs.

KLS, a heavy sentence is required. The sentence must adequately reflect the gravity of each specific occasion of abuse, and the harm that you have inflicted upon two victims. The sentence must be an effective deterrent to others who may be minded to abuse children in their care. The protection of children is a paramount concern and general deterrence is a critical sentencing objective. The community is entitled to expect the courts will impose harsh punishment when its vulnerable members are abused in this appalling way.

I record convictions. On count 1, a sentence of five years' imprisonment is imposed backdated to 5 August 2022, the date you were remanded in custody. You are ineligible to apply for parole until you have served two and a half years of your prison sentence.

On count 2, I take into account the discount for your plea of guilty and the sentence also has been moderated to take account of totality and the sentence already imposed on count one. I impose a sentence of imprisonment of 9 years. You are ineligible to apply for parole until you have served 5 years' imprisonment.

The total period amounts to 14 years' imprisonment with a non-parole period of 7 and a half years.

I make an order under the *Community Protection (Offender Reporting) Act 2005* that your name be placed on the register pursuant to that Act and that you comply with the reporting obligations under that Act for 25 years.