

The defendant is convicted on his plea of guilty to one count of persistent sexual abuse of a child and one count of indecent assault. The defendant is now aged 77. The crimes were committed between 1968 and 1976 when he was aged between about 22 and 30. At that time he lived at Deloraine but worked in Launceston. During the week he boarded with a Mr and Mrs H who lived in Invermay and then in Summerhill. The victims of the crimes were Mr and Mrs H's two daughters T and Y who, at the start of the period of offending, were respectively aged five and three. In each house the defendant had his own bedroom. The girls shared another bedroom. Mrs H experienced poor health. Mr H was employed. Because the defendant was such a long term boarder he became an integral part of the household and helped to transport and look after the children.

The indecent assault was committed against Y. It occurred between 1971 and 1974 when Y was aged somewhere between 6 and 9. The defendant placed Y's hand on his exposed penis. Although he is charged with a single count of indecent assault it was not an isolated occasion. It was the first of a number of similar assaults with which he has not been charged. In addition, it is to be considered in the context that Y was asked by the defendant on other occasions to wash him in the shower, masturbate him and perform oral sex on him. She refused such requests but they strongly indicate that the defendant had a sexual interest in her. He threatened her with harm if she told her parents what was happening.

The crime of persistent sexual abuse of a child was committed against T. The indictment refers to the period between 1967 and 1976 when T was aged between 5 and 14. This crime is committed when unlawful sexual acts are perpetrated against a child on at least three separate occasions within the specified period. The defendant admitted some sexual acts but some of the details of his conduct were disputed. To resolve that dispute I heard evidence from T, who I will also refer to by the pseudonym Mrs James. I was asked to take account of statements from three persons in the nature of complaint evidence. I viewed an audio visual recording of the interview conducted by police with the defendant on 27 August 2019, and the defendant gave evidence in his defence.

Some facts were not in dispute. The defendant admits that throughout the offending period, beginning when T was five or six, and ending when she was 14, he frequently touched her on the outside of her vagina. On some such occasions his fingers penetrated her genitals to some degree although not her vagina. It was asserted in the prosecution statement of facts that one occasion involved penetration of her vagina and stimulation of her clitoris but Mrs James gave no evidence of any such occasion. The offences I have so far described would thus now be regarded respectively as indecent assault and, on the occasions of penetration of the genitalia, rape. It was a different crime at the time although it is the criminality of the conduct, rather than identification of the crime, which is relevant. Mrs James gave evidence that acts of that nature happened between 50 and 100 times. The defendant estimated about 40 times. It makes little material difference but for reasons I will explain I accept Mrs James's evidence. She recalls him, at first, coming into her bedroom in Invermay at night with a torch, pulling up her nightie and looking at her vagina under her nightie and touching her with his fingers. Acts of the same nature began to take place in the lounge room, often when he came home from work in the late evening when her parents were either in bed or absent. The conduct continued after the family moved to Summerhill in 1975. At the end of that year T turned 14

and at the beginning of the following year she began her second year of high school at a new school. That was the year that the defendant last offended against her.

In that context, eight particular occasions are identified by the prosecution. Four are alleged to have occurred in Invermay and four in Summerhill. Of those occasions, three are the type of conduct which I have already described and which the defendant admits. Two occasions describe penetration of the vagina rather than the genitalia but Mrs James did not give any evidence of penetration of her vagina by the defendant's finger. The remaining identified occasions were disputed by the defendant. However I am satisfied beyond reasonable doubt, subject to the qualifications I will explain, that all but one occurred as described by Mrs James. I first deal with the occasion which is not proved. Mrs James described what she referred to as the first ever occasion the defendant touched her vagina. She said he, after taking to see her mother in hospital, bought her an ice cream and drove her to Relbia. She was five and wearing her school uniform. She remembered that the front seat of the car was a tan bench seat with white stitching. He pulled her pants down and touched the skin on the outside of her vagina. If proved it is an indecent assault. The defendant denied ever having a car with a bench seat. He said he then did not know where Relbia was. I am not sure that I believe the defendant. I think that this event probably happened. But his evidence has raised a doubt in my mind about it and I cannot exclude the reasonable possibility that Mrs James, given her very young age, the admitted events which followed and the passage of time, is recounting a false memory.

I have no such doubts about the remaining identified occasions. It is at once to be noted that Mrs James and the defendant in their evidence, and the defendant in his interview, were describing events which occurred many decades ago. Mrs James was a child when those events occurred but is now 60. There is an obvious possibility that, through the mere passage of time, memories of some events may be false or distorted. However I found Mrs James to be an intelligent, articulate and honest witness. She gave evidence about events which, by their nature, were likely to be imprinted on her mind. As distinct from the incident in the car, she was describing examples of repeated conduct of a similar nature about which she could hardly have been mistaken. I reject the possibility that some of the things she described were imagined. By the time of the later conduct she was older and more likely to fully appreciate the significance of it. In addition, in many important ways, the truth of her evidence was admitted by the defendant, which tends to support the credibility of her evidence in other respects. With the exception of the occasion in the car to which I have already referred I accept the evidence of Mrs James wherever it is in conflict with the evidence of the defendant. The account he gave to the police and in his evidence was vague and tentative. That may be accounted for by his age, but I do not think so. He had led, and continued to lead, a highly idiosyncratic life. He had been in the army before getting a job and beginning to board with Mr and Mrs H. He claimed that he had not had sexual intercourse at the time of these crimes and did not do so until he was in his 50's. In his interview he initially denied having committed sexual acts against the girls but later admitted having committed multiple indecent assaults. His put his admitted assaults down to curiosity rather than sexual interest.

Mrs James gave evidence of an occasion when the defendant was in her bedroom in Invermay. She said he tried to kiss her but she turned away. He then kissed her on the stomach when her nightie had been pulled up. He denied the conduct. I find her account completely convincing and consistent with the type of behaviour the defendant otherwise admits.

Of more significance is the dispute about another three occasions. On two of those occasions Mrs James described the defendant rubbing his penis on her back until he ejaculated. The defendant denied any such incident and claimed that despite his admitted abuse in other ways there was no occasion on which he ejaculated in either house. I found Mrs James's evidence about these occasions compelling. She described that she was, at the time, a night owl and would sometimes be still up sitting in the lounge room when the defendant arrived home from his work late in the evening. She gave evidence that the defendant would rub her back, sometimes progressing to her vagina. She described an occasion when he then turned her over and rubbed his penis on her back until he ejaculated. She was confident he ejaculated because he wiped her back with something. She described how that conduct happened more than once, she said a few times in the lounge room but also in the bedroom where he would also ejaculate on her back. Only two such occasions are particularised. The third disputed occasion occurred in her bedroom. Mrs James said it was the last occasion on which the defendant committed any sexual act against her. By then she was 14. She said that he came into her bedroom and, as she was lying on her stomach, he lay on top of her. He had an erection and tried to push his penis into her vagina. After trying for a few minutes, unsuccessfully she said because she was "too small", he put his penis on her back and rubbed himself up and down until he ejaculated. When asked whether there was any penetration of her vagina she answered, "Yeah...a little bit."

The defendant's denials to the police and in his evidence that these events occurred do not cause me to experience a reasonable doubt about the truth and reliability of Mrs James's evidence. I reject his denial of sexual interest in the girls, which must either be intentionally false or the result of him having somehow persuaded himself of the truth of what was, in light of his conduct, an irrational and implausible claim. His evidence about never ejaculating is inherently implausible and no more likely to be true. He admitted the truth of Mrs James's evidence about massaging her back and other indecent assaults. I am satisfied that each of these three disputed occasions occurred. I am satisfied that, on the final occasion, the defendant's penis penetrated T's genitals to some degree but not her vagina.

For those reasons the defendant is to be sentenced on the basis that each of the identified occasions except the first is proved, and in the context that throughout the period of about eight years between 1968 and 1976 he regularly committed unlawful sexual acts against T. I find that the majority of those acts were him touching her with his fingers on the outside of her vagina but on other occasions, fewer in number, conduct occurred of the more serious nature I have described. There is no evidence that penile penetration or attempted penile penetration occurred on more than one occasion.

The defendant is now aged 77. For his whole working life until his retirement 10 years ago he held secure employment in clubs and hotels. He has never been in a stable relationship. An assessment conducted in 2020 disclosed that he has mild age related cognitive decline but not such that it is relevant to sentence. He has a physical problem with his foot which increases the chance that he may trip and fall and for that reason he uses a walking aid. My observation of him in court is that he is somewhat frail. Apart from a few driving offences which are irrelevant, he has no prior convictions. That means that he has not been found to have re-offended in the many decades since these crimes were committed. He presented to me as having a very simplistic understanding of his offending and a lack of appreciation of the seriousness of it. Having said that, by virtue of his age and circumstances, he no longer poses any real risk of re-offending. In light of those considerations I will allow the earliest opportunity for parole.

I am required to take into account the aggravating factors referred to in the *Sentencing Act*, s 11A. On some occasions members of the family of the complainants may have been in the house at the time the offences were committed. There is nothing to suggest that anyone other than the two girls became aware of what was happening but it may have added to the trauma of the victims at the time. The children were not formally under the defendant's care, supervision or authority although the long term nature of his arrangement with their parents meant that he assumed a supervision role from time to time. His crime did involve a serious breach of the trust extended to him by the children and their parents. Y was younger than 13, and so, for most of the time, was T. His advanced age and the prospect that he may spend all or a substantial part of the remainder of his life in prison are relevant considerations but do not justify the imposition of an unacceptably lenient sentence. The passage of time since the offending is also relevant, but, conversely, potential offenders must understand that they will not escape punishment even if, as is very often the case, sexual crimes only come to light many years later. Some mitigation arises from the defendant's plea of guilty. It provided substantial vindication for the victims. However it was not an early plea and for a prolonged period they faced the prospect of having to give evidence at trial. Moreover some of the benefit of it was lost because Mrs James was required to give evidence and be cross examined about a dispute which was resolved substantially against him.

The seriousness of sexual crimes against children has been explained and emphasised in many cases. The primary aim of sentencing is the protection of children from the great harm which may result to victims of child sexual abuse. As far as that can be achieved by a sentencing court it is by punishment, denunciation and general deterrence. This case is a good example of the type of harm such crimes can cause. In her victim impact statement Mrs James describes the type of consequences which frequently arise and are to be expected. My impression of her giving evidence was that she was a person of intelligence and fortitude. However the emotional and psychological impact on her has been serious and lifelong. Her mental health was badly affected. She developed anxiety and depression, experienced nightmares and an aversion to sexual contact which eventually led to the failure of her marriage and impaired her ability to form other relationships. She held senior and responsible positions of employment but found herself unable to continue. She did not find any assistance until she was referred to her current psychologist in 2018. I did not receive a victim impact statement from Y but I was informed by counsel for the prosecution that she has also been affected. I will impose a single sentence. In my assessment the indecent assault warrants a sentence of imprisonment for at least a year. The crime of persistent abuse of a child warrants a term of imprisonment for at least seven years. Given the separate criminality involved and the individual victims there is no reason that the terms should not have been cumulative.

PMR, you are convicted on both counts on the indictment. Because in my assessment there is no material risk of reoffending I decline to make an order under the *Community Protection (Offender Reporting) Act 2005*. You are sentenced to a term of imprisonment of eight years. I order that you not be eligible for parole until you have served half of that term.

[On 17 March 2023 the sentencing orders were corrected to include an order that the term to be served by PMR commence on 20 February 2023]