

STATE OF TASMANIA v JDC
COMMENTS ON PASSING SENTENCE

23 MARCH 2023
JAGO J

JDC, you are to be sentenced for one count of persistent sexual abuse of a child and one count of indecent assault. You pleaded not guilty to both of these charges, but following a trial, the jury found you guilty of both charges. It is my duty, consistent with the verdicts, to find the factual basis for sentencing. In doing so, I may only make findings adverse to you if satisfied they have been proved beyond reasonable doubt and I may only make findings of fact in your favour if they are proved on the balance of probabilities. The victim in respect to the count of Persistent sexual abuse of a child is your biological daughter. I will refer to her as "H". She was born in 2007 and was aged 11 to 13 when the sexual abuse occurred. You were aged 41 to 43. The victim in respect to the count of indecent assault was your brother's step-daughter. I will refer to her as "T". She was aged 15 at the time of the crime and you 43 years of age. It may be taken from the verdicts that the jury accepted generally the truth of the evidence of each complainant, and also that they rejected beyond reasonable doubt the denials you made to police during the records of interviews.

As to the first count, to find the defendant guilty, the jury needed to be satisfied beyond reasonable doubt that the defendant committed an unlawful sexual act on at least three separate occasions. H gave evidence of 11 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 11 occasions occurred as she described in her evidence. In all essential respects, I found H to be a truthful witness and her evidence to be compelling. Her evidence was corroborated by the complaints she made to friends and others. I accept there was some variation between the versions of what they were told but I am satisfied that is entirely explicable by the passage of time and the difficulty in consistently identifying the same occasion of abuse when there was a protracted course of abusive conduct. I am satisfied the eleven specified occasions occurred against a background of many similar acts of sexual abuse, as H described in her evidence. The eleven specified occasions involved one crime of indecent assault and ten crimes of rape committed when the defendant, without consent, penetrated H's vagina with his penis.

The crimes occurred in the family home, both within the main bedroom and within H's bedroom. They also occurred in a forestry area near the family home when H had gone woodcutting with the defendant and others; at a public pool when H had gone on an outing with her family and a friend; at a boat ramp near the family home when H had gone with the defendant to deliver some firewood and in various locations at H's grandparents' residence, including in a carport, a garage and a caravan. The sexual abuse frequently occurred when other members of the family were in the near vicinity although not in the immediate area. It was brazen and arrogant behaviour and indicative in my view of a confidence that the defendant could control H and his abuse would remain secret.

The first occasion involved the crime of indecent assault. This was the first time the defendant sexually assaulted H. It happened when she was 11. She was unwell with a migraine. She had showered and was in the main bedroom of the family home. She was crying because she was so unwell. The defendant touched her on the vagina, underneath her clothing. After this he simply walked out. H said that after this first occasion more incidents of this kind occurred. In her evidence she described him as "touching me with his hands and then after my twelfth birthday, it got worse.....it was more often and he was using his penis".

The second occasion occurred approximately a week after H's twelfth birthday. She was in her mother's bed. She had slept there overnight with her mother. Her mother had gone to work at approximately seven am. H awoke to the defendant raping her. He had put his penis inside her vagina. This was the first act of penile penetration. The defendant ejaculated onto a towel. He did not wear a condom.

The third occasion also involved the crime of rape. When H and the defendant were on a wood cutting expedition he told her he needed to show her a tree, away from the area where other persons were. They walked to an area "down a big bank" about five minutes into the bush. He again penetrated her vagina with his penis. He ejaculated onto the ground. He did not use a condom.

The fourth occasion involved the crime of rape. When H was on a family excursion to a pool, the defendant played games with her and the other children. He was throwing the children up into the air and they were splashing down into the pool. Some of the family got out to get changed. At one point the defendant had H in the corner of the pool, pulled her pants down and inserted his penis into her vagina whilst he was standing behind her.

The fifth occasion also involved the crime of rape. On an occasion when H was with the defendant delivering a load of wood, he drove to a local boat ramp. He exited the motor vehicle and walked around to the passenger side. He pulled H to the edge of the seat and again put his penis into her vagina. He ejaculated onto the ground. He did not use a condom.

The sixth occasion occurred in H's bedroom at the family home. H was sick with a migraine. H's brothers were in the family home. The defendant told her brothers not to enter H's bedroom because she was going to sleep. The defendant entered the bedroom and raped her by penetrating her vagina with his penis. He again did not use a condom and ejaculated onto a towel. On this occasion, the defendant also attempted to penetrate H's mouth with his penis but she pulled her head away and he was unsuccessful in doing so.

Occasion seven also involved an act of vaginal/penile rape. It occurred in early August 2020, when H was 13. It occurred in the main bedroom of the family home. Again, the defendant did not use a condom and ejaculated onto a towel or the floor.

The eighth occasion occurred in H's bedroom at the family home. It occurred in the week prior to 26 August 2020. Her brothers were at home playing the PlayStation. The defendant entered her bedroom, closed the door, put her on the bed and raped her by penetrating her vagina with his penis. He ejaculated onto a towel or a mat on the floor in H's bedroom. The defendant's semen was later detected by a forensic scientist on a mat in H's bedroom.

H left the family home shortly after the incident I have just described. She subsequently made disclosures to several friends at school and on 26 August 2020 she told police about these specified occasions in a recorded statement. She also told police more generally about the abuse the defendant had been perpetrating upon her, describing these types of acts as happening "heaps of times...whenever Mum's at work and whenever he can". The defendant was spoken to by police on 29th August 2020. He denied any sexual wrongdoing of any nature. He was charged and placed on bail conditions which prevented him from having any contact with H. This did not stop the sexual abuse. The defendant continued to attend the family home where H was initially living after the disclosures had been made, and H would attend at her grandparents' home, where the defendant was living, usually in the company of her mother,

and at times when the defendant would be there. Further sexual abuse occurred at the grandparents' home whilst the defendant was subject to the bail conditions.

Occasion nine happened in the carport at the grandparent's home. Other family members were inside the residence. H was in the carport. The defendant came out into the carport and started touching her, under her clothing, on her vagina. He then pulled her pants down and penetrated her vagina with his penis from behind whilst he was standing up. When he was finished he told H to "fuck off inside". H went and asked her mother could they leave.

Occasion ten occurred in the garage at her grandparents' residence. H had entered the garage to retrieve a lawnmower. The defendant came into the garage and again raped her, penetrating her vagina with his penis. Upon hearing another door, the defendant told her to pull her pants up and he quickly exited the garage.

The eleventh occasion occurred in a caravan at H's grandparents' place. H was inside the caravan assisting the defendant with some renovations. Again, he touched her on her vagina, underneath her clothing. He then pulled her pants down and pushed her onto a bed and penetrated her vagina with his penis. When a family member knocked on the caravan door, he stopped.

As noted, the eleven specific occasions were not isolated incidents, but rather the specified occasions occurred in the context of ongoing and persistent sexual abuse throughout the entire period of the Indictment, including after the defendant had been placed on bail conditions. His preparedness to continue to engage in the sexual abuse of H, even after he had been charged and placed upon bail conditions, is extraordinary and speaks to his moral culpability and his determination to continue with his sexual abuse of his daughter. Generally, H described the sexual abuse as happening on a regular basis, whenever the defendant had the opportunity to do so. She also said there were occasions when the defendant attempted to, and did in fact, penetrate her mouth with his penis. During her evidence she described episodes of sexual abuse as occurring approximately 100 times. I will sentence on the basis that all of the unlawful sexual acts are to be seen as part of a period of sustained sexual abuse which included acts of indecent assault and rape, including both vaginal and oral penetration.

The focus of the sentence must of course be upon the eleven specified occasions and the defendant is not and will not be sentenced for the uncharged conduct, but the uncharged conduct is revealing as to the defendant's moral culpability and responsibility with respect to the eleven specified occasions. Moreover, the defendant is not someone who can assert that these were isolated occasions, or that they occurred spontaneously. His sexual abuse of his daughter was protracted and determined.

I find that after H made her initial disclosures to police she was subject to immense pressure from the defendant and other members of her family to withdraw her complaint. She was told that maintaining her complaint would break the family up and her brothers would be left without a father. She was offered money and a motorbike to withdraw her complaint by the defendant. At one point, I am satisfied members of the family (although I cannot be satisfied beyond reasonable doubt the defendant was directly involved) pressured H to write a withdrawal statement and took her to the police station to present it. Her mother and her brothers ostracised H from the family. She received no support or protection from her mother or her extended family. The pressure upon her was immense. The feelings of loneliness,

despair and abandonment she must have experienced cannot be understated. She showed courage and strength in withstanding such pressure.

Count two concerns T. T was the defendant's brother's stepdaughter. At the time, the crime against her was committed, T was living with the defendant. She was therefore under his care, supervision and authority. T moved into the defendant's residence in approximately July 2020. Before she moved in, the defendant had sent her a message which read "Maybe u masturbate?" T described how the message made her feel most uncomfortable. The defendant admitted sending the message but suggested it was somehow a misconceived endeavour to develop trust with T. I reject that suggestion. I am satisfied it was reflective of the defendant's sexual interest in her. The indecent assault occurred approximately one month after T had moved into the residence. T was sitting in H's bedroom. The defendant entered and sat on the bed with her. TD moved away and further up the bed. The defendant pushed her down onto the bed and was grabbing her by the thighs and trying to put his hand under her top. He was trying to hold her down and kiss her neck. T resisted and continued to try and move away. The defendant tried to put his hand into the top of T's pants. Fortunately, another child came home and yelled out for his father. That brought the incident to an end. Very shortly after this incident occurred, T left the defendant's residence.

I note aggravating circumstances for the purposes of s 11A of the *Sentencing Act* include that both H and T were under the defendant's care, supervision and authority at the time of the crimes. In respect to H, the course of offending commenced when she was only 11 and several episodes of sexual abuse occurred whilst H was under the age of 13. Much of the offending occurred when other children were present in the house, although there is no suggestion that they observed or were aware of the sexual abuse. Nevertheless, the defendant was prepared to expose his other children to the risk of being aware that he was sexually abusing their sister and the potential psychological consequences of them gaining such knowledge.

The exceptionally serious moral and criminal wrongdoing associated with the defendant's behaviour, hardly needs to be stated. Much of the abuse occurred within the family home where H and T, for the time that she was living there, were entitled to feel safe and protected. The defendant's abuse in respect to his daughter was persistent and went on for an extended period of time. The defendant's conduct involved the most appalling breach of trust. The defendant bore a responsibility to nurture, care and protect his daughter but instead, he took advantage of his position as her father in order to abuse her for his own gratification. The defendant deprived his daughter of the secure, safe and loving childhood she was entitled to expect and receive. The defendant destroyed the most important bond of a parent/child relationship. His abuse has also deprived H of a relationship with her mother and brothers. That is a loss which will be harshly felt by her for a long time to come, if not permanently. It is well understood that conduct of this nature has profound and deleterious physical and psychological impacts upon victims for many years, and most likely their whole lives. The true effect of the defendant's abusive conduct may not emerge for many years yet. I have read and carefully considered the Victim Impact Statements of H. It describes the type of adverse psychological impact, which may be expected from crimes like this. The defendant's abuse has permeated and effected virtually every aspect of H's life. Her statement movingly describes the very real sense of loss she experiences because she no longer has a family. The defendant's abuse caused that loss. The decision to disclose the abuse within a family context was a brave one, but it must also have been an incredibly difficult and stressful experience for H. The extent of the feelings of isolation, betrayal and confusion she experienced are difficult to comprehend.

I have not received a Victim Impact Statement from T. That does not suggest that the defendant's abuse had no impact upon her; indeed it is most likely to be the opposite. Abuse of this nature almost inevitably causes serious, lifelong harm.

The defendant is now 45 years of age. He has no relevant prior convictions, but that is not unusual in a case of this nature. He has enjoyed a strong work history. He has demonstrated no remorse nor insight into his appalling conduct. He is not entitled to the mitigation a plea of guilty would have attracted, which is significant in cases such as this. I cannot identify any factor that reduces either his moral or criminal responsibility.

In sentencing crimes of this nature, there is a strong need for general deterrence to reflect the courts' duty to protect children. Punishment and denunciation are also important sentencing objectives. The community expects courts to impose harsh punishments when its vulnerable members are abused in this manner. For crimes of persistent sexual abuse of a child, a defendant should ordinarily suffer the same penalty as if the offences were charged separately but moderated, of course, to allow for proportionality and totality.

A weighty sentence is necessary here to adequately reflect the gravity of the abuse perpetrated and the harm that has been inflicted upon two victims. I intend to impose separate sentences in respect to each count to reflect the different levels of criminality, appropriately moderated to take account of totality.

I make the following orders. I record convictions in respect to each crime. On count 1, the persistent sexual abuse of a child charge, the defendant is sentenced to imprisonment for a period of 12 years, commencing on the 1st March 2023. Because of the gravity of the offending behaviour, I order that he not be eligible for parole until he has served six years and six months of that sentence.

On count 2, the defendant is sentenced to imprisonment for a period of eight months, cumulative to the sentence I have just imposed. I order the defendant not be eligible for parole until he has have served one half of that sentence.

The total period of imprisonment therefore is 12 years and 8 months with a non-parole period of 6 years and 10 months.

I am required to make an order under the *Community Protection Offender Reporting Act 2005* unless I am satisfied that the defendant does not pose a risk of committing a reportable offence in the future. Having regard to the circumstances of this case, I am not so satisfied and accordingly must make an order. I order that the defendant's name be placed on the Register pursuant to that Act and that he comply with the reporting obligations under the Act for a period of 15 years, which will commence on the date of his release from prison.