

JAGO J

At the time of committing the June 2018 crime you were on bail for similar offending. In April 2015, police had found in your possession 7,352 images of child exploitation material. Then in November 2016, before you had been dealt with for the April 2015 crime, you were again found in possession of child exploitation material. This time 2,728 images were found. You were charged and committed to the Supreme Court in January 2017. You pleaded guilty to two counts of accessing child exploitation material and two counts of possessing child exploitation material. You were sentenced on 4 July 2018 to 16 months' imprisonment, wholly suspended on condition you commit no crime punishable by imprisonment for three years. You were placed on the *Community Protection (Offender Reporting)* Register for a period of five years from that date. That sentencing order is not a prior conviction in respect to the June 2018 offending, although as I have noted it is aggravating in my view that you were on bail for similar offending when that crime occurred. It is a relevant prior conviction for the September 2021 offending. That offending occurred very shortly after the expiration of the period of suspended imprisonment and whilst you were still subject to an order pursuant to the *Community Protection (Offender Reporting) Act*.

- Category 1 depicts images with no sexual activity, but the images are sexually suggestive or sexual in nature.
- Category 2 depicts images involving solo sexual acts between children; sexual acts between children with no penetration and solo masturbation by a child.
- Category 3 depicts non-penetrative acts between an adult and child
- Category 4 depicts images of penetrative sexual activity between children or between adults and children.
- Category 5 includes material depicting sadism, torture, bestiality or humiliation.
- Category 6 depicts animated or virtual images or videos.

In June 2018, you possessed 6,394 images and one video which were classified as Category 1; 460 images which were classified as Category 2; 63 images which were classified as Category 3, 122 images and one video which were classified as Category 4, 36 images which were classified as Category 5; two images which were classified as Category 6 and 1,917 images which were categorised as Category 7, which involves non-illegal material. The main of the images possessed by you were in the lowest category in terms of gravity, but it is noteworthy

that you were also in possession of a not insubstantial number of images in the more depraved categories.

It seems there were considerable delays associated with the investigation and categorisation of the material located in June 2018. You were not interviewed about the matter until September 2021. You made admissions to police about your possession of the material. You told police you had downloaded the material on the laptop from a site that your father had accessed. You told police that you would download "a pack" that would contain between 200 to 1,000 images and occasionally contain videos. You denied that you had intentionally downloaded anything "hard core". You told police that you knew it was illegal and wrong but that "I become enveloped with him – that all goes out the window". This was a reference to your father and your exposure to child exploitation material by him throughout your childhood.

On 27 August 2021 members of Tasmania Police attended your residence for the purpose of conducting a check pursuant to the *Community Protection (Offender Reporting) Act*. In particular, they were checking as to whether you were in possession of any electronic devices. You told police you did not have a computer, and in doing so knowingly provided them with false or misleading information. You failed to disclose to police that you were in fact in possession of a Toshiba laptop and seven external hard drives. These actions ground the summary charges to which you have pleaded guilty.

On 8 September 2021 police executed a further search warrant at your residence. This time a HP laptop computer with an external hard drive connected, together with a separate external hard drive was located under your bed. These items were subject to a forensic examination. Again, child exploitation material was found upon them. It was categorised pursuant to the Interpol Baseline Classification System. That system classifies material as follows:

- Category 1 is the most serious. It depicts real prepubescent children under the age of 13 years where the child is involved in a sexual act, is witnessing a sexual act, or the material is focused or concentrated on the child's anal or genital region.
- Category 2 material depicts, amongst other things, real children aged between approximately 13 and 18 years, where the child is involved in a sexual act, is witnessing a sexual act, or the material is focused or concentrated on the child's anal or genital region.
- Category 3 depicts images that form part of a series of child exploitation material, but which is not, in its own right, illegal.

In total you were in possession of 15 Category 1 videos, 1,222 Category 2 images and 19 Category 2 videos, and 5,525 Category 3 images.

In general terms, the videos and images which were Category 1 and Category 2, most frequently depicted pubescent and pre-pubescent children, mostly female, engaged in oral and vaginal penetration by adults, or depictions of a real pre-pubescent child aged approximately under the age of 13, engaged in sexual poses. I have regard generally to the bundle of images tendered as representative of the images that were possessed by the defendant.

In respect to the material possessed in 2021, when interviewed, the defendant admitted to police that he had tried to hide the laptop and hard drives under the bed because "I didn't want them to be taken because I knew what was on it". He also told police "I don't do it because I want to", "Goddam my father". The defendant told police the laptop had a login and password but

the external hard drives had no additional password protection. The defendant told police that he had downloaded eight to nine packs of images over the preceding two nights. It was material from the website that his father had commonly used. The defendant suggested to police that whilst he was viewing the child exploitation material he was "taking on my father's persona". The defendant also agreed that when police conducted the check in August 2021 he had deliberately lied about the laptop because he knew what was on it.

As I have noted, the matter for which the defendant was sentenced in July 2018 is a prior conviction for the 2021 offending. As at 26 June 2018 when the earlier offending occurred, the defendant had no relevant prior convictions. The defendant is now aged 64 years. He is reliant on a Disability Support Pension. He has a number of medical conditions, including serious heart conditions and severe asthma. He also suffers from significant mental health conditions. He suffers from post-traumatic stress disorder and a major depressive disorder. He has had in the past significant suicidal tendencies and has been admitted to hospital on a number of occasions because of suicide attempts. His mental health difficulties largely arise from what can only be described as a horrific childhood. He was exposed to considerable physical and verbal violence during his upbringing by his father. Examples of physical abuse perpetrated upon him include being "stomped" upon, struck with a metal belt buckle and being burnt with a kerosene burner. The defendant has been left with significant scarring and partial hearing loss as a consequence of the physical violence. I am also told the defendant's father perpetrated sexual abuse upon him on a regular basis and that he was also required to perform sexual acts upon his siblings. It is obvious the defendant has endured the most horrendous of upbringings. He continues to suffer with nightmares. They are severe. He also has considerable difficulties with insomnia.

Despite the manner in which the defendant's father treated him, I am told the defendant cared for his father during the last three years of his life. He did this in the hope that he may recoup some of the love and affection that was so glaringly absent from his childhood. Instead, his father ridiculed him and continued to express disappointment in him. This exacerbated the defendant's mental health difficulties. His father was a consumer of child exploitation material. Following his father's passing he discovered an old computer, which he accessed and found upon it a large quantity of child exploitation material. It is from there that his interest developed. Since then, the defendant has regularly accessed such material in an endeavour it seems to contextualise his relationship with his father.

In sentencing the defendant I have regard to the principles articulated by Porter J, as he then was, in *Director of Public Prosecution v Latham* [2009] TASSC 1. Those principles are well understood and I do not need to repeat them here. I note that across all of the offending, the number of images the defendant possessed was relatively significant. The fact the defendant was in possession of such material whilst he was on bail for similar offending, and was then again found in possession of such material shortly after the expiration of a period of suspended imprisonment, but whilst still subject to an order pursuant to the *Community Protection (Offender Reporting) Act* is a seriously, aggravating feature. The defendant's persistence in offending is a most relevant sentencing consideration. It emphasises the need for personal deterrence. Sentencing orders imposed upon the defendant in the past do not appear to have been successful in deterring him from ongoing offending.

I note there is no suggestion that any of the material has been distributed. The defendant lived with his son. Arguably, the material was accessible to him but beyond that, it is unlikely to have been accessible to others. The defendant lived a fairly reclusive existence and visitors to

the home were not common. There is no basis from which I could conclude that there was a high degree of planning, organisation or sophistication involved in the storage of the material. The defendant's persistence in offending, however, clearly demonstrates that he has a high level of personal interest in the subject matter.

The evils of accessing and possessing child exploitation material have been stated many times by the courts. The production of such material involves the exploitation and abuse of children somewhere in the world. It is notoriously understood that children involved in such production almost inevitably experience significant psychological and psychiatric harm. Possession of such material exacerbates and extends the abuse and exploitation of those children. Clearly, general deterrence and denunciation are paramount sentencing considerations and for the reasons I have expressed, so too in the circumstances of this case, is personal deterrence. It must be understood by the defendant and the community at large that the possession of this type of material will result in heavy punishment. I take into account the defendant's plea of guilty. It retains a utilitarian benefit, despite the fact it was entered at a relatively late stage, and facilitates the administration of justice. The seriousness of this offending necessitates in my view the imposition of a substantial period of imprisonment. I make the following orders. The defendant is convicted of all matters to which he has pleaded guilty. In respect to the offences of provide false or misleading information and fail to comply with reporting obligations, I make no further order. In respect to the two counts of possession of child exploitation material, I impose one sentence. The defendant is sentenced to a period of imprisonment for two years and six months, commencing on 25 October 2022. I make an order that he not be eligible for parole until he has served one half of that sentence. This is a reportable offence under the *Community Protection (Offender Reporting) Act 2005*. I am not satisfied that the defendant does not pose a risk of committing a reportable offence within the meaning of that term in the Act in the future. I therefore make an order directing that the Registrar cause his name to be placed on the Register and that he comply with the reporting obligations under the Act for a period of ten years from the date of his release from custody.

I make a forfeiture order pursuant to s 130F ss 2 of the *Criminal Code* that the WD Elements 2TB C4P hard drive, the Toshiba laptop, the HP laptop computer and the external hard drives be forfeited to the State of Tasmania.