

STATE OF TASMANIA v BTF
COMMENTS ON PASSING SENTENCE

17 APRIL 2023
JAGO J

BTF you have pleaded guilty to one count of persistent sexual abuse of a young person. Between 1 November 2015 and 27 February 2019 when you were aged 24 to 27, you engaged in sexual acts with a girl then aged 13 to 16 years. In around March 2015 you met the complainant via an on-line dating website. At that time you were aged 24 and the complainant was aged 13, although she had set her age as 16 on her profile on the dating website. After meeting, you and the complainant began to regularly exchange messages. You would engage in conversations with her which were of a sexual nature, including discussing your sexual preferences which included performing violent sexual acts upon sexual partners. In late March/early April 2015, you and the complainant met in person for the first time. No sexual acts occurred on this occasion. There was then no further contact until November 2015 at which time you and the complainant recommenced exchanging messages. Shortly thereafter, you commenced a sexual relationship with her. The relationship continued until June 2020. The complainant turned 17 in February 2019, thus the latter part of the relationship did not involve criminal behaviour. The two of you lived together between March 2019 and June 2020.

The crime of persistent sexual abuse of a young person is committed when it is proved that an unlawful sexual act was committed on at least three occasions during the indictment period. In respect to the complainant, six specified occasions are relied upon by the State but those occasions occurred in the context of ongoing and persistent sexual abuse that occurred throughout the indictment period.

The first occasion involved you committing the crimes of indecent assault and penetrative sexual abuse of a young person. Between November 2015 and January 2016 the complainant was living with her aunt. At around 2.00 one morning you collected her from her aunt's home and drove to a nearby river area. Whilst driving you took hold of the complainant's hand, put it down your pants and placed it upon your erect penis. You asked the complainant if she was "ready for it". On arriving at the river, you walked with the complainant to an area away from the carpark. You began to kiss her and roughly grab at her breasts. You told her to get onto the ground and remove her clothing. You directed the complainant to get onto her hands and knees and penetrated her vagina with your penis from behind. During sexual intercourse you were slapping the complainant's buttocks and saying things like "You've been a bad girl." You ejaculated within the complainant. This was the first time the complainant had experienced sexual intercourse. When she returned to her aunt's home, she sat in the shower and cried. You subsequently sent her a message asking her how old she really was, the obvious inference being that very early into the relationship you well appreciated the complainant was much younger than she had previously indicated. She responded to your message by saying she was 15. She was, in fact, 13.

Between November 2015 and late January 2016 you regularly had sexual intercourse with the complainant. It occurred approximately two to three times per week. Each time you ejaculated inside her. You would also make her perform oral sexual intercourse upon you. You would put your hands on either side of her head, place her mouth over your penis and then control her head by moving it back and forth. On occasions you would ejaculate into her mouth, or onto her face. The complainant did not enjoy performing oral sexual intercourse upon you but allowed it to occur to ensure you were happy.

The second occasion involved the crime of penetrative sexual abuse of a young person. Between November 2015 and January 2016 you and the complainant were again having sexual intercourse at the same river side location. You had vaginal-penile sexual intercourse with her but at some point removed your penis from her vagina and ejaculated onto her face. Some of the ejaculate went into her eye.

The third occasion also involved the crime of penetrative sexual abuse of a young person. It occurred at your home. You had sexual intercourse with the complainant on a mattress in your bedroom. By this time, I am satisfied you were aware the complainant was 14. In the lead up to her 14th birthday she had had a discussion with you indicating it was her 14th birthday that was upcoming. You also knew that she was in Grade 8 at high school. You knew this because you knew her teacher. Despite knowing she was so young, you continued to have regular sexual intercourse with her. The complainant would sneak out of her mother's home and have sexual intercourse with you multiple times per week. She also sometimes skipped school in order to have sexual intercourse with you.

The fourth occasion also occurred in your bedroom at your residence. The complainant was lying on a mattress. You used two pieces of rope to tie together her ankles and her hands. You then proceeded to have penile-vaginal sexual intercourse with her. Generally, there were several occasions in which you tied the complainant's hands and ankles together prior to having sexual intercourse. The tying of the ropes would often leave red marks on her skin.

The fifth occasion also involved the crime of penetrative sexual abuse of a young person. Between February 2018 and April 2018, when the complainant was living with her father, she would sneak out from her father's home to meet you. You took her to your residence and had sexual intercourse with her. Afterwards, when you drove the complainant back to her father's residence, you became lost and you shouted at the complainant blaming her for the situation.

The sixth occasion also occurred whilst the complainant was living with her father. Whilst travelling together in a motor vehicle, you were pulled over for a random breath test. You told the complainant to tell the police if they enquired, that she was your sister. Following the intercept, you and the complainant went to your residence and had vaginal-penile sexual intercourse. You again ejaculated inside her. During foreplay you used a belt to strike the complainant on her buttocks. There were other occasions in which you also struck her with a belt during sexual intercourse.

In December 2018, the complainant told you that she did not wish to continue with the relationship unless it could be "official". You told her the relationship could be and that you loved her. The complainant posted on social media that she was in a relationship with you. In response to this, you became angry and told the complainant she had violated you. You made her take the relationship status down. After she had turned 17, the complainant fell pregnant, but suffered a miscarriage which caused her significant mental anguish. Whilst this did not occur during the period of the indictment, it is relevant she fell pregnant towards the end of what had already been quite a sustained relationship and one that had commenced when the complainant was very young and ill-equipped emotionally, sexually and socially to make informed and considered judgements. In June 2020 the relationship ended.

In September 2021, after considerable reflection, the complainant decided to report the relationship to police. She contacted you to inform you. You asked to meet with her. She did so. You asked her not to report the matter until you had the opportunity to be in your best

friend's wedding. You also told the complainant that if she went to the police, you would kill yourself. This was an emotionally manipulative statement, reflective of self-interest rather than concern or support for her, and it contextualises the claim of remorse you made at your sentencing hearing. The complainant reported the matter to police in November 2021. You were subsequently interviewed. You admitted to police that you had been in a relationship with the complainant. You told them you initially believed that she was older than she in fact was, although admitted to them that she did look younger than her claimed age. You said you had been in a relationship with her for quite some time before you found out her real age. You said by then, you had developed genuine feelings for her and wanted to continue the relationship.

As I have noted, I am satisfied that by February 2016, when the complainant turned 14, you knew her real age. I am not satisfied however that you knew she was 13 at the time you commenced a sexual relationship with her. To my mind, however, it matters little. You knew from a relatively early stage in the relationship that she was young and you simply should have ended it. You also told police that during the time you were in a relationship with the complainant, you were smoking a lot of cannabis and drinking alcohol heavily. You described yourself as "a very broken person" saying you were desperate for anyone to show you affection. You admitted to police that you had "spanked" the complainant and had also engaged in "rope play". You told police that you had sexual intercourse with the complainant usually one to two times a week but that you could not say how many times, in total, you had engaged in sexual intercourse with her.

You are now 31 years of age. You grew up in a supportive home environment but found your schooling years quite difficult because of bullying. You were often teased about your physical appearance. You were also sexually abused around the age of ten by an older female. You have not disclosed the identity of that person, nor reported it to police but you reported to a psychologist that the sexual abuse involved you touching each other's genitalia and that the female would show you mainstream, heterosexual pornography. Following this experience, I am told you developed a habit of watching pornography nearly every night. That habit continued into your early twenties. You formed your first serious relationship when you were 18. The relationship lasted two years. Following the breakdown of that relationship you entered into a "deep spiral of depression". You came to believe that your girlfriend had used you because she was, in fact, gay and had been secretly dating a female throughout the time you were together. You were embarrassed and confused. Thereafter, and throughout most of your twenties, you lived a lifestyle that involved engaging in a series of casual sexual relationships. You developed particular sexual interests which were apparently fuelled by sexual anger flowing from the feelings of deception and betrayal you carried from the first relationship. Also throughout your twenties, you were consuming alcohol and cannabis heavily. It was during this period of time that your relationship with the complainant occurred.

I have read and carefully considered a forensic psychological assessment, undertaken by Dr Georgina O'Donnell. Dr O'Donnell opines that your mental state is currently stable and that you are not presenting with any symptoms of any major mental illness, substance use disorder or personality disorder. She also opines that you do not present as having a persistent sexual interest in minors. In my view, there is little in the report of Dr O'Donnell that mitigates your behaviour.

You are currently employed as a supervisor at a strawberry farm. You are well regarded in that employment. You also now have a strong, supportive network around you. Over the past 18

months you have become involved with the local church community, and I am told you have reflected a lot upon your past lifestyle choices and have resolved to change for the better. You regret your behaviour and the harm you have caused the complainant. Alcohol and cannabis are no longer a difficulty for you. You have solid prospects for reform.

You have no relevant prior convictions but that is not unusual in matters of this nature. You are entitled to mitigation from your plea of guilty. You entered that plea when the matter was still before the Magistrates Court. The complainant therefore knew from an early point in time that she was not going to be required to give evidence or endure the humiliation of contested court proceedings. The complainant speaks of that being a relief in her Victim Impact Statement.

I regard your crime as a relatively serious example of its type. The relationship lasted for several years. The age disparity between you and her was not insignificant. As a matter of fact, the complainant was only 13 when the relationship commenced, and whilst you may not have appreciated she was that young, you knew she was only 14 when you determined to continue a sexual relationship with her. The relationship was intense. It involved you exposing the complainant to particular forms of sexual practice when the complainant was young and at an impressionable and formative stage of her emotional and sexual development. The law prohibits conduct of this nature because of the potential harm that can result to young persons from premature sexual activity. The law recognises that a person of this age is simply not mature, nor experienced enough to make considered and informed decisions about engaging in sexual activity. Nor is a person of this age able to adequately recognise or assess the harm that may flow from engaging in such activity. Here, the complainant has sadly been significantly adversely affected by your crimes.

I have carefully read and considered her Victim Impact Statement. She speaks of the trauma she has experienced as a consequence of the relationship. She has suffered serious psychological harm necessitating hospitalisation. Her family relationships have been damaged. She experiences nightmares and flashbacks. She struggles with forming new relationships and with intimacy. She suffers considerable stress and anxiety. The type of impact she describes is very typical of what courts understand and recognise as being the consequence of the sexual abuse of young persons.

You took advantage of her youth and her vulnerability for your own sexual gratification. Whilst I accept that the relationship was largely one of mutual affection, and there is no suggestion the acts were committed without her consent, or that you used force or threats to overcome resistance, or resorted to overt pressure or manipulation, in cases like this such factors offer little mitigation. The complainant's consent was informed by her vulnerability, her life circumstances and her still young age. At times she acquiesced to sexual acts to keep you happy. The fact that she developed affection for you only compounded her vulnerability to abuse by you. Your moral culpability is, in my view, high.

The sentence must reflect the need to protect the community by deterring others in a similar position who may be tempted to act in the same way, and must also punish and denounce your acts. The only appropriate sentence is one of imprisonment, but I will reduce the sentence, I would otherwise impose, because of your plea of guilty.

I must 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 into the future. I

note the report of Dr O'Donnell which suggests future risk is not high, but having regard to the circumstances of this case, I certainly cannot discount it and accordingly I 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 five years following your release from custody.

You are convicted of the crime to which you have pleaded guilty and sentenced to imprisonment for a period of four years. I order that you not be eligible for parole until you have served one half of that period of imprisonment. That period of imprisonment will commence on the day you were remanded in custody, namely 5 April 2023.