

STATE OF TASMANIA v LOUIS VICTOR DANIELS
COMMENTS ON PASSING SENTENCE

12 MAY 2023
ESTCOURT J

The defendant, Louis Victor Daniels, now aged 75 was a prominent leader and member of the Church of England Boys' Society, known as "CEBS" in Tasmania during the 1960's, 1970's and 1980's. In 1975 he became a priest and held a number of senior positions within the Anglican Church in Tasmania. He has pleaded guilty to two counts of persistent sexual abuse of a young person contrary to s125A of the *Criminal Code*

CEBS would hold annual camps for young boys aged between 8-12 years, and it was in the course of attending such camps as one of the adult leaders that the defendant befriended the first complainant, who I shall call "J".

J, who is now aged 52, first attended a CEBS camp in 1980 at Coningham. The defendant was the Camp Director. J found the defendant to be very calm and friendly and regarded him as a father figure. The following year, in January 1981 J attended his second CEBS camp at Coningham, and during this camp the defendant began to show him attention.

One evening J was in bed on the bottom bunk in the dormitory. He was wearing pyjamas consisting of shorts and a shirt, but no underwear. The defendant came in and sat next to him on the bed. He asked him to lie on his stomach. The defendant rubbed J's back for a few minutes. The defendant then asked the complainant to roll over onto his back. The defendant placed his hand inside J's shorts and touched his genitals for a few seconds. J pretended to be asleep because he did not know what to do or how to react. The defendant then got up and left the dormitory. J states that this happened on at least one other occasion during the camp of 1981.

J's last camp was in 1983 and was without incident. Following that year, he was considered too old to attend the camps, however in 1984 he attended a branch of CEBS in search of refuge from his unhappy home life. Towards the end of 1984, the defendant invited the complainant to attend the next CEBS camp as a junior leader, which he did.

On 14 January 1985, J's 14th birthday, he attended a CEBS camp at Coningham as a junior leader. He arrived late in the afternoon and the other campers were already at the beach. The defendant was in the camp dormitory and greeted J with a long hug. He then kissed J on his lips and put his tongue in J's mouth and moved it around. J left the dormitory and went to the beach.

A few days later, J and a group went down to the beach. It was during the evening. J left the beach earlier than the others to go back to the dormitory. The defendant followed him and in a dark area grabbed him and started kissing him and putting his tongue in J's mouth. The defendant then put his hand on J's genital area and rubbed over the top of his clothing. That lasted for a few minutes.

In around March 1987, when J was 16 years old, the defendant invited CEBS junior leaders to Meander Falls. J attended with about six other people and they all stayed at the rectory in Deloraine where the defendant lived. One day they took a trip to the Meander River. J went swimming in a swimming hole and the defendant invited him to go for a drive up to a trail to the falls to check out a cabin. The drive took about ten minutes and they got out of the car and

went for a walk towards the river. The defendant then grabbed J and started kissing him. He put his tongue in J's mouth. The defendant then rubbed J's genitals on the outside of his jeans. J managed to get free and stepped out into the river and onto a rock. The defendant tried to follow but the rock wasn't big enough for two of them to stand on. Eventually the defendant agreed to leave the river. In the car on the way back down the defendant asked J if he wanted to see the cabin and J said "no" and he wanted to go back.

During this trip, Peter Francis (another leader) spoke to J about the defendant. Mr Francis told the defendant that two other boys, A and S, had told him about things the defendant had done to them. J then told Mr Francis what the defendant had done to him.

A few months later, J and Mr Francis approached Reverend David Hayman, the rector of Lenah Valley, and told him what the defendant had done. They gave Reverend Hayman permission to speak to the Bishop of Tasmania, Phillip Newell.

In around June of 1987, J and Mr Francis met with Bishop Newell and told him what the defendant had done. A week or two later they had another meeting with Bishop Newell and J was asked to put in writing what the defendant had done to him. J wrote about the two incidents and gave it to Bishop Newell.

In 1994 a civil action taken by J against the defendant was settled with a monetary sum paid to him personally by the defendant.

In December 2015 J was contacted by the Royal Commission into Institutional Responses to Child Sexual Abuse. He presented a statement to them in January 2016.

In December 2018 J decided to pursue criminal proceedings against the defendant and went to the police in another State where he was living and provided a statement. The matter was investigated and while the DPP gave authorisation to charge the defendant, that advice coincided with COVID and, as a consequence of which all extraditions were cancelled until about the middle of 2022.

On 17 May 2022 the defendant was arrested in another State and his extradition to Tasmania was approved. He appeared in the Hobart Magistrates Court on 19 May 2022. He was held in custody overnight and entered a plea of not guilty on 20 May 2022, whereupon he was bailed and committed to this Court.

The second complainant, who I shall call "S", when he was aged approximately 9 years, would attend weekly meetings and annual camps of CEBS. A little later he met the defendant who was in charge of the group that he had commenced attending.

S's parents were shift workers and the defendant would often provide him with a lift home after the CEBS meetings. When S was approximately 14 years old, the defendant was giving him a lift home after a meeting when he stopped the car and put his hand on S's leg, unzipped his shorts and started touching his penis. He then masturbated the complainant until he ejaculated.

On another occasion, in about 1979, S had been to the movies with a group of youths from the CEBS group. Afterwards the group had a sleepover at the defendant's home. There were not enough beds for everyone so S slept in the defendant's bed with him. After removing his own pyjamas, the defendant placed his arm around S, put his hand down S's pyjama bottoms and

began to touch his penis. The defendant had S perform oral sex on him by grabbing the back of his head and forcing it down onto his penis. The defendant ejaculated into the complainant's mouth and forced him to swallow.

At a CEBS camp at Dover, S cut his foot while kayaking and the defendant drove him back to camp in his car. The defendant stopped the car and put his hand down the complainant's shorts and began to masturbate the complainant's penis. He then made the complainant perform oral sex on him by forcing his head onto the defendant's penis and again ejaculated into his mouth.

On another occasion following that camp the defendant took S to the defendant's home for a sleepover after a CEBS activity. On this occasion the defendant rolled S onto his stomach and anally penetrated him. Afterwards S cried and the defendant drove him home. The defendant told S that it was a secret and that because he was a priest, no one would believe S.

S recalls that in 1980 he attended a CEBS camp interstate and he recalls that "things happened on that camp" but is unable to recall the specifics. He recalls that he decided that he had had enough and that he did not return to CEBS after that year. S says that he was touched sexually dozens of times by the defendant between about 1978 and 1980.

S did not tell anyone until he was married in 1992. This coincided with some publicity related to the defendant. However the matter was not reported to the police until April 2019.

The DPP provided police with advice to charge in September 2022, however after discussions with the defendant's legal representative, it was decided that the DPP would proceed with an *ex officio* indictment in respect of that charge, and arrange a time for the defendant to present himself at the Hobart Supreme Court to plead guilty to the indictment.

The defendant has relevant prior convictions:

- On 28 May 1999 he was convicted of two counts of sexual intercourse with a young person. He was convicted and sentenced to 12 months' imprisonment with 3 months suspended.
- On 13 May 2005 he was convicted of a raft of sexual offences on boys. He was convicted and sentenced to 7 years and 6 months' imprisonment, with a non-parole period of 5 years and 6 months.

On that latter occasion the learned sentencing judge noted that the course of conduct occurred over some 20 years between January 1974 and December 1993, while the offender was aged between 27 and 46 years. The ages of the youths varied between 11 and 17. Some 10 youths were the subject of predation. His Honour noted that in 1999 the defendant was sentenced to a term of 12 months' imprisonment following his conviction for acts of sexual predation on a 15 year old youth in 1992, and that investigation of some of the matters before his Honour had commenced before that sentence, but the full investigation was not completed until early 2004. I note that it was in those circumstances his Honour observed that the sentence he was about to impose would take into account the sentence already served, saying that had all matters been dealt with following a single sentencing hearing, it would have reflected the totality of conduct.

I note that a similar situation as regards totality, although in a different context, was encountered by Brett J in sentencing in *State of Tasmania v Harington* (4 March 2020).

I have heard and read victim impact statements from both complainants. They are eloquent and, as is so often the case, reflect lives broken by the repellent and perfidious abuse of men like the defendant.

I quote but one sentence from the statement read to me by J. He said:

"The assaults from Daniels started when I was a young boy. I am now 52 and I cannot remember a time when my life was free from the memories of shock and confusion when the assaults happened or the ongoing shame of feeling responsible for what happened. The flashbacks and intrusive thoughts are with me every day and occur several times each day."

S's statement reveals that he has ongoing nightmares and is afraid to trust people in many situations, including work where he stood down from a management role because he did not feel good enough. He often wonders what his life would be like if these things had never happened to him. He then feels confused and tormented. He has been diagnosed with PTSD and anxiety and depression. He takes antidepressants and has good family support and support from his GP. He thinks that he finally understand what triggers his anxiety and that he is finally at a point, where he can believe that what happened to him was not his fault.

The defendant is 75, single, and has no children. He worked as a schoolteacher before being ordained as an Anglican Priest in 1975. During his time in the Church, he was ultimately appointed to the position of Archdeacon. He consented to his defrocking as a clergyman sometime between the years 1999-2005. During his years as a clergyman he was highly respected and achieved a range of senior positions.

Following leaving the Church he took up teaching again. That ended, and then he undertook training and employment as a librarian. He is now retired from the workforce and has been in receipt of an age pension for the last 10 years.

The defendant is remorseful. His pleas of guilty were indicated at an early stage and in relation to J, civil proceedings were settled in the early 1990s, and the defendant personally paid damages in the order of some \$50,000.00. Additionally, the defendant participated and cooperated as a witness at the Royal Commission into Institutional Responses to Child Sexual Abuse.

Counsel for the defendant submits that the separate sentencing of the defendant, at a later time for similar crimes which form a pattern of conduct coinciding in time with crimes for which he as sentenced for in 2005, may have a compounding effect, such that the overall severity of the total sentence may be unreasonably greater than had he been sentenced concurrently with the 2005 matters. This has nothing to do with the principle of totality, as for example was the case when Brett J sentenced *Harington* in similar circumstances on 4 March 2020 but where *Harington* was then serving a sentence of imprisonment for the earlier similar crimes. That is not the position here. I also note generally the comments on passing sentence of Brett J in *State of Tasmania v G* on 17 April 2023.

The fact is that the defendant was not sentenced for these crimes at the same time as the crimes for which he was sentenced in 2005, and of course he could have confessed to these crimes at that time. Had he done so, he may well not have received the same sentence for the present crimes as he in fact will. I do take the earlier sentence into account in a general way, as Slicer

J seems to have done in 2005, recognising that as a result of that earlier sentence deterrence has a lesser role to play in sentencing than do denunciation and vindication of the victims.

These are heinous crimes committed by a predator by way of terrible breaches of trust.

These crimes involved offending against two separate children and the defendant's offending occurred over a total period of nine years and seven months. There was an overlap with the offending subject to count 1, which commenced in January 1981 and then continued for a period of almost seven years, until December 1987. The defendant's acts were not out of character or isolated.

In relation to count 1, the complainant was under the age of 13 years when the first occasion of sexual touching occurred. This is an aggravating factor under s11A(1)(c) of the *Sentencing Act*. During the period of offending J was aged between 9 or 10 years old and 16 years old.

In relation to count 2, the accused masturbated the complainant, made the complainant perform oral sex on him on two occasions and anally penetrated him. Following the anal penetration the complainant was crying and the accused told him that it was a secret and he would not be believed. These acts occurred while the accused was giving the complainant a lift home, while the complainant was sleeping over at the accused's house with a group of youths from the church, and during camping trips.

I have already noted the offending involved a breach of trust and that is an aggravating factor under the Sentencing Act. The defendant also used emotional threats against S to cover up his acts and manipulate him into not seeking help. This heightens the defendant's moral culpability.

I note that under s 11(3) of Sentencing Act, if I impose a single sentence, which I propose to do, I must identify the sentence that would have been imposed for each child sexual offence, had separate sentences been imposed. In imposing a single sentence I must also give effect to the principle of totality.

I note what was said by Wood J in *Director of Public Prosecutions v Harington* [2017] TASCRA by Wood J at [28].

"That the principle of totality is closely tied to the principle of proportionality and there are limits on the extent to which aggregate sentences should be reduced to take account of totality. Ultimately, the aggregate sentence must justly and fairly reflect all of the offender's criminal conduct. This means that the sentence must be heavy enough to adequately reflect the number of crimes and the gravity of them. The sentence has to be justly proportionate to those crimes and sufficient to reflect the totality of the criminality evidenced by the offences."

At paragraph [29] her Honour noted that in giving effect to the principle of totality the court must ensure that the sentence gives recognition to the separate harm caused to a victim by the commission of separate crimes, and in the case of the commission of crimes affecting more than one victim, the harm that individual victims have suffered.

As submitted by counsel for the State, the need to denounce sexual offending of this nature, such as conduct that amounts to indecent assault and rape is crucial. Denunciation and retribution are also significant factors to consider when setting the non-parole period.

While a non-parole period may be set having regard to an offender's prospects of rehabilitation, including their age, whether they have past history of offending and their prospects of re-offending, circumstances of particular gravity justify the imposition of lengthy non-parole periods. This is particularly so where the crime justifies the giving of prominence to denunciation and retribution, in that it reasserts societal values and gives proper weight to the harm done to the victims.

I must make a Community Protection (Offender Reporting) Act, 2005 Order unless I am satisfied that the defendant does not pose a risk of committing a reportable offence in the future. I am not so satisfied. I make an order that the defendant's name be enrolled on the register and that he comply with the reporting conditions under the Act for life.

Where I sentencing the defendant separately on count 1 and count 2, I would have imposed a sentence of 3 years imprisonment on count 1 and 5 years imprisonment on count 2. As it is, taking into account all the matters to which I have referred, I impose a single sentence of 6 years imprisonment and order that the defendant not be eligible for parole until he has served 4 years of that sentence. I backdate the sentence to 27 March 2023.