

STATE OF TASMANIA v SEAN PATRICK MAHONEY
COMMENTS ON PASSING SENTENCE

25 MAY 2023
GEASON J

Mr Mahoney, you have pleaded guilty to an indictment alleging 3 counts of indecency.

I am also dealing with matters on complaint, pursuant to s 385A of the Criminal Code to which you have entered pleas of guilty.

The offending the subject of the indictment occurred on 5 November 2021.

As at that date, I record that you were subject of a period of suspended imprisonment, the balance of a sentence imposed on 17 September 2021 by Justice Wood.

On 5 November 2021, you were in in Franklin Square in Hobart. A 14 year old student boarded a bus and took a seat next to the window towards the rear of the bus before another student, also aged 14, boarded and sat next to her. Both girls were wearing their school uniforms. You also boarded the bus.

You spoke to the driver, and then walked down the aisle towards the complainants, and sat on a seat directly behind them. The bus left Franklin Square and drove towards Sandy Bay Road. As the bus turned onto Sandy Bay Road, you changed seats to sit directly across from the complainants. When one of the girls stood to activate the stop near her school on Sandy Bay Road she saw that you had your hands in your trousers and that you were masturbating. She said, "What the fuck?" and she describes feeling physically ill seeing what you were doing.

Her remark caused the other girl to look and observe you. She could see your hand moving your penis underneath your track pants. You continued to masturbate looking straight ahead towards the front of the bus. The complainants exited the bus at a stop close to Wrest Point Casino. You got off the bus at the same stop and walked after them. You circled around the complainants as they waited at the traffic lights, before walking back towards the bus stop. The complainants reported this incident to a teacher at school, and ultimately, members of Tasmania Police were contacted by the school principal. The complainants were distressed and attended school counselling that day.

This is count 1 on the indictment.

Later on, the same day, between 1pm and 1.30pm, the complainant in respect of this count was present with a friend in Collins Street, Hobart. Soon after she sat down to eat her lunch, you sat within her eye line on the grass nearby. You put your hand into your trousers, and she could see that you were masturbating while making eye contact with her.

She looked away and then looked back, staring at you, at which point you, placed your black backpack over your crotch and continued to masturbate. She said to her friend, "this is weird, we got to go." She left the area before contacting police when she returned to work. CCTV captures you leaving the area of Collins Court at the approximate time of the incident. This is count 2 on the indictment.

Shortly after 2pm on the same day, you entered the Icon Complex off Murray Street and went to the basement floor public toilets. You are identifiable on CCTV footage in that area, moving

between the disabled toilet, and the men's toilet within the corridor. At 2.15 pm, the complainant on this count went to the female toilets in the same area within the complex. As she approached the toilet, she saw you standing in the doorway of the men's toilets, staring vacantly outwards towards the hallway.

She went to the female toilet. There was another woman in that room. That woman left before her, and also noting your odd behaviour reported it to the manager of the Country Road store within the complex. The manager of that store made his way to the area of the toilets.

The complainant returned to the hallway after using the bathroom. As she did, she could see you standing in the same spot but by now you were masturbating with your hand inside your track pants. She was startled and yelled, "Fuck off."

She walked towards the exit, and you started to follow behind her. As she left, she saw the store manager making his way towards the area. She asked if he was security, and told him about you hovering in the doorway of the male toilets. As they spoke, they saw you walk out of the male toilets towards them, looking at them. A cleaner in the complex also noticed you and yelled to you not to follow the complainant who had run up the escalator, and hidden within the Mecca store.

She attempted to ring the police radio room, but was put on hold. As she did, she saw you reach the top of the escalator, and exit the complex. She hung up the phone and took a photo of you later providing that to a complex employee. You were identified from CCTV footage relating to this incident.

You were interviewed in relation to these matters on 5 May 2022, attending Hobart Police Station by appointment. You indicated you had no recall of the incidents, but denied having masturbated in public since having been released from custody in September 2021.

Under caution, you said the following upon being shown the CCTV footage or still images from that footage:

- 1 The person on the on the CCTV footage looks like you, but you definitely did not masturbate.
- 2 You had only just gotten out, so had been on your best behaviour.
- 3 You had gone to the bathroom at the Icon Complex before, but had not loitered there. You said you would normally use the disabled toilet if it was available and there would be no reason to go back to a toilet once you had left it, unless you had left belongings there.
- 4 You said you were unsure why you returned to the male toilets after going to the disabled toilet.

You said that what you were most likely doing at the Icon Complex was tying the drawstring of the pants in your pocket. That you were definitely not touching yourself and that you would not have been following the woman out of the Icon Complex, but rather that you were merely leaving the complex.

You agreed that the track pants and shoes on the footage were items that you either owned or had previously owned, and that the backpack looked the same as yours. You said you would sometimes go to Sandy Bay just to get out of town for a while. On each occasion that people thought you were masturbating, you said that you were probably touching your drawstring.

You said there was a problem with it; you agreed there was no reason for you to be touching the drawstring whilst sitting on a bus, but you were probably getting something from your pocket.

Your track pants and backpack were seized and photographed.

You were remanded in custody following interview, but released on bail on 9 June 2022, having spent 35 days in custody. You were bailed with strict conditions, including that you only leave your bail address in the company of four identified persons.

The following facts relate to the matters being dealt with on complaint pursuant to s 385A of the Code.

On 8 August 2022, at 7.40am, you boarded a Metro bus from near your address at Lauderdale. You were not in the company of any of the persons required by your bail conditions. The bus you boarded was largely populated by high school students. You walked to the back of the bus, and sat between two teenage school students, one male and one female, both wearing their school uniforms. You placed your hand into your pants and began masturbating.

You moved closer to the female student and continued to masturbate, at times exposing your penis to her. She got off the bus a short time later and the male student reported your behaviour to the bus driver. The bus driver contacted Tasmanian Police to report the incident. Later on the same day, police received a triple-0 call from a woman in Lauderdale indicating that there was a man acting strangely on South Terrace. She saw you standing in bushes before you pulled down your pants and began masturbating.

Police attended a short time later and located you about a hundred metres from where you had been seen by the triple-0 caller near to a children's playground. Again you were on your own, in breach of your bail conditions. You were arrested and taken to the Hobart Police Station, but declined to participate in a video recorded interview. You were remanded in custody and where you have remained.

You were 32 years old at the time of your offending and as I said at the outset you were subject to a suspended sentence imposed by Justice Wood for similar offending.

In respect of the summary matters you were subject to bail conditions.

In mitigation, I am told that you had been in receipt of a disability pension prior to your remand for an acquired brain injury you suffered in 2013 when you were involved in a car accident. You were also the victim of a serious assault in 2014.

Your parents separated when you were 13 and you were raised by your mother; having little to no contact with your father who resides interstate. Contact with your mother is limited.

You have worked in the past but not for the last 8 years.

You were homeless or couch surfing prior to your remand though you had some accommodation through a former employer, who remains supportive of you.

Your accommodation difficulties are in part due to mental health conditions which Dr Jordan diagnoses as schizophrenia or a schizoaffective disorder. You are medicated for that condition and this appears to have been successful, in large part due to your adherence to taking that medication. It is not suggested that that condition has contributed to or caused your offending.

I accept you have no independent recollection of this offending and that you are remorseful and ashamed. I acknowledge your early plea as evidence of that remorse and also acknowledge the utilitarian benefit which accrues because of your plea. I will reduce the sentence I impose by 15% in recognition of that benefit.

This conduct is not your first offending and as I have already said you were subject to a suspended sentence at the time it occurred. You are in breach of that sentence and I propose to activate it. The relevant period of that sentence is 7 months and 17 days. I have regard to totality in fixing the sentence in respect of the current offending but also the need for a proportionate sentence to reflect the objective seriousness of your conduct.

It was my objective to impose a sentence that had an emphasis on a therapeutic outcome as well as addressing the relevant sentencing considerations - general deterrence, punishment and personal deterrence but after investigation it appears my options are limited in that respect to a structured program, known as the New Directions program which is offered within the prison. There is little to no structured community-based option available. That is a situation which I consider unfortunate and regrettable, because I do not accept that longer and longer sentences necessarily serve a useful purpose in discouraging repeat offending for this type of behaviour.

In fixing sentence I have regard to the victim impact statements which have been tendered and weigh the impact of your conduct on the complainants. The young people who witnessed your behaviour were traumatized by it; all your victims were affected by it.

I sentence you as follows:

I activate the suspended sentence of 7 months and 17 days to commence on 4 July 2022.

On the indictment I sentence you to 15 months imprisonment to be served cumulatively to the activated sentence. I fix a non parole period of 9 months and I encourage you to participate in the New Directions program during that period. Part of my intention in fixing sentence is to provide you with sufficient opportunity to do that.

My expectation is that if you undertake that program you will be paroled subject to appropriate conditions. The Parole Board is best placed to frame those conditions based upon the report of the new directions programme co-ordinators and the usual pre parole report. I emphasise that I expect parole will be conditional on your successful participation in that program.

On the complaint in respect of count 1, I sentence you to 4 months' imprisonment, in respect of count 2, I sentence you to 3 months' imprisonment, both those sentences are to run concurrently with the sentence I have imposed on the indictment.

I make an order pursuant to the Community Protection Offender Reporting Act that the registrar cause your name to be placed on the register and you are to comply with the reporting obligations under the Act for a period of 5 years commencing at the point of expiration of the current order which I understand to be 18 September 2028.

The head sentence I have imposed is fifteen months' imprisonment, you will be eligible for parole after you have served 9 months of that sentence but you must understand that you also have to serve the suspended sentence which I have activated. That eligibility accrues at the point where you have served 9 months plus 7 months and 17 days.