

STATE OF TASMANIA v DAVID EDWIN RAPSON
COMMENTS ON PASSING SENTENCE

13 JULY 2023
PORTER AJ

David Rapson, the defendant, has pleaded guilty to three counts of indecent assault committed on three separate complainants – all young male students at the Dominic College in Hobart – each on separate occasions between 1983 and 1986. At that time the defendant held a Bachelor's degree in theology and had been ordained as a Catholic priest in 1982 in an Australian wide Order which conducted a number of schools. The defendant was employed as a member of the staff. His responsibilities included the supervision of the middle school; grades 7 to 9. He taught religious education and was a boarding house master. I note at this point that none of the complainants has consented to being identified, and I allocate them single letter references.

The first count relates to complainant G, who was about 14 or 15 at the relevant time – sometime in the year 1984. He had been educated in the Catholic system in both primary and secondary years. He first met the defendant when he finished grade 7 during the school holidays in 1982 and was introduced to the defendant as the religious co-ordinator in charge of one of the home rooms. When G started grade 8 he spent time with the defendant at recess and lunchtimes in the playground. He looked up to the defendant and enjoyed spending time with him. This progressed to socialising after school hours either alone, together or in company with other students. G would spend time in the defendant's office after school or on weekends watching television, including adult pornography, and drinking beer. The defendant also introduced G to smoking, and supplied him with cigarettes. At times, the defendant would pick up G from his home and take him to his office, or they would spend time together, drinking at a beach location. They travelled away together for weekends when the defendant conducted masses at different churches within Tasmania. These trips involved the defendant supplying and drinking alcohol with G and with other students. The defendant regularly expressed his affection for G, telling him he loved him, and these expressions were accompanied by the defendant cuddling him, rubbing up against him and blowing in his ear. The extent of the relationship is shown by the fact that on one occasion the defendant took G to his private living quarters in the college, an area students were prohibited from entering. On a Saturday sometime in 1984, G was with the defendant and a group of students in the defendant's office. They were drinking alcohol and smoking cigarettes and G felt affected by the alcohol. After the alcohol run out, the two left the group to obtain more. G believed that all of this involved playing a joke on the other students. However, the defendant took G by the arm, took him up a stairwell and into the doorway of a dormitory. In the doorway, the defendant stopped the complainant and faced him. He knelt down pulled G's pants and underwear down, placed G's penis in his mouth and sucked it whilst holding it with his hand. There was a continuation of licking and sucking in a gentle manner. G told him to stop and tried to push him off but the defendant was too strong. All in all the sexual contact lasted for about 30 seconds after which G pulled up his pants and ran down stairs. The defendant followed but nothing was later said. G knew what had happened was wrong but did not feel comfortable speaking out at the time. Although upset about the conduct he was concerned about being called a homosexual and not being believed. After that G avoided being alone with the defendant and the defendant stopped invited him on trips away as regularly. In the early 1990's, when G was made aware of the defendant facing allegations of similar conduct in Victoria, he contacted the defendant and asked why he had been involved in the defendant's conduct. The defendant replied that he loved him, that he was different, one of a kind and special.

The next count relates to A who was then about 15 years old having started at the College in grade 7 in 1984. That was when he met the defendant. The defendant did not teach him any subjects but as the defendant was a popular identity, A spent time visiting him in his office listening to music. During 1985 A was among a small number of boys selected for a trip to the Derwent Valley to act as altar boys for a mass. The defendant drove them all in the one vehicle and on the way stopped to buy alcohol and cigarettes for the boys. They all started drinking early in the afternoon when they arrived, with A ending up quite intoxicated. After the mass they went to a house nearby and A, being ill from too much drinking, was put to bed in a room adjoining a lounge room where the others were. During the evening, A awoke to find the defendant touching him. He froze as a result. The defendant placed A's penis in his mouth and sucked it. I was not given any estimate of the time for which this occurred. When he stopped, the defendant asked in words to the effect of, "You did not want that to happen to you?". A shook his head at which point the defendant left the room. A did not tell anyone immediately about this sexual contact. I was told he harboured feelings of shame and disgust for many years and was only recently able to speak to police about it.

The third count involves P, who was 14 at the relevant time in 1983. He had then been at the school one year. The defendant spoke to P alone on several occasions, over a period of time. P got the impression that the defendant was sympathetic and offered him a degree of solace and support. He approached the defendant as he was a younger member of staff and P had no father figure in his life. P had previously been sexually assaulted by a family friend and this was something he confided to the defendant. The two spent time together in the defendant's office, playing music with P being allowed to smoke and consume alcohol. At times the defendant provided P with adult pornographic videos and magazines. One day around the middle of 1983, P went to see the defendant in his office as he was having difficulties at home. He was emotional and distraught. The talk turned to masturbation and this led to an offer by the defendant to help him in that respect. P admitted he had been masturbating in an unsuccessful attempt to lower his aggression. The defendant suggested it would be better if someone else performed the act. The defendant told him he should trust that not everyone wanted to be nasty and hurt him. He then proceeded to unzip P's pants, pull them down and began to masturbate him. He then knelt in front of P, placed P's penis in his mouth and sucked it. This lasted for about two to three minutes. P became erect and ejaculated. He was then told to go back to class. P later disclosed this to some former students and spoke with police when he was identified as a potential witness in 2017.

In terms of the investigation into the defendant's conduct, the matters were referred to Tasmania Police when he was identified as a possible perpetrator by the Royal Commission into Institutional Responses to Child Sexual Abuse. In March 2018 the defendant was interviewed at a correctional facility in Victoria where he was serving a term of imprisonment, a matter to which I will return. He made some general admissions about being with students, purchasing alcohol and drinking with them, saying that he did not have friends in Tasmania and considered he was mates with the group. He made limited admissions in relation to G, saying he did take hold of his penis but stopped when he was asked, but denied oral intercourse. He told police that he took the complainant's penis as he was raised to believe friendships involved sexual contact. As to A, he admitted performing oral sex, and generally agreed as to the circumstances. He said that he felt that this act was particularly wrong and admitted that he always thought it was the worst act of abuse for which he was responsible. As to P, he said that he could not recall a student by that name and denied any wrongdoing.

I have victim impact statements from the three complainants. G speaks of pent-up anger within a few years to the extent that he joined the Army as a way to relieve his anger and frustration, but he said he had already commenced on a journey of self-destruction. He could not forget what had happened and became completely obsessed with it. He adopted addictive behaviours in the form of drinking, smoking and gambling. At one point he saw an article about the defendant's sexual misconduct in Victoria and felt guilty as he had done nothing about it. That consumed him for a time and up to the point where he attempted to commit suicide. He remained angry and with addictive behaviours. He says that because of the drinking and smoking at school, he could not apply himself and realises his lack of schooling has closed many opportunities for him. He has undergone rehabilitation although that does not appear to have been very successful. He struggles to maintain relationships. A speaks of constant shame and fear which often surfaced to the point feeling physical harm. He has trouble sleeping. A consequence of the defendant's conduct related to him being both religious and talented at sport. These fell by the wayside. He had contemplated joining the priesthood but what happened to him separated him from religion. He lost his competitive edge in sport and dropped out of all the teams he had been in. He became withdrawn and isolated, and then at 16, homeless and suicidal. He talks of constant risk of self-harm and he too relates difficulties in applying himself to his studies, or to any employment through his 20's. He seems to have made it through tertiary education but struggled to do so. Fortunately he has a career involving a job that he loves, family and friends who he adores and has now found a level of peace. P read his statement to the Court. He describes the destruction of trust and faith in the Catholic Church and most people in general. His family relationships at the time disintegrated and sent him into self-destructive behaviours such as drug addiction, prostitution and petty crime. Since the defendant was charged, he has experienced excruciating mental anguish that led him to almost losing a long term relationship with the mother of his children and the risk of estrangement from those children. He believes that, in his words, his "life would have been very much better appreciated and regarded by himself", if he had not had to deal with 40 years of self-loathing and carrying blame and shame of the defendant's actions as his own.

The delay in the finalisation of these matters from 2018 is effectively due to the bureaucratic processes that were required to secure the defendant's transfer from the Victorian prison to Tasmania. The original summons was issued in January 2019. Difficulties were encountered and it was not until April 2021 that the Attorney-General made the formal request. Further difficulties were encountered, including the pandemic, and the transfer order was formally made in January 2023. It was not until 9 May that the defendant was actually brought into this State, and the matter listed for trial in June. There were originally five counts on the indictment. The defendant's counsel reached an accommodation with the State and the pleas to the three counts were duly entered.

The defendant is now nearly 70 years old. As at the time of this offending he had no recorded history. However, he was sentenced in late 1992 in the Melbourne Magistrates Court to a total of two years' imprisonment on three counts of indecent assault, and again in 1993 to further terms of imprisonment for two further similar charges – the two sentences seemed to have been made concurrent and it appears he actually served a period of ten months. The material does not show the time period of this offending. Much later, in May 2015, the defendant was sentenced in the Victorian County Court to 12 ½ years' imprisonment with a non-parole period of nine years and four months for a range of sexual offending – some of it quite serious. He was eligible for parole on 1 March 2023 but that process is in abeyance because of these proceedings. The sentence expires on 29 April 2026. All of the offending resulting in the three separate terms of imprisonment referred to involved sexual misconduct with male students at

schools where the defendant taught and later purported to dispense pastoral care. In the main, the offending was of a more serious generic nature than this. I note that it also involved grooming and the use of alcohol. The most recent term of imprisonment was for offending in the period 1975 to 1976, and then, more significantly for the present exercise, a later period between 1987 and 1990. A total of five victims was involved. The sentence was moderated due to the totality principle and the fact that the defendant was facing sentence after a second re-trial. The remaining thing of significance in this context is that there is no recorded history of offending at all – apart from a drink driving matter in New South Wales in 2009 – since his release after serving the terms of imprisonment imposed in 1992-1993. Of course, for a considerable time since about 2014 he has been in custody, but there remains a lengthy period without apparent blemish nonetheless. As to his general personal circumstances, he grew up in country Victoria and later in New South Wales. He does not know who his biological father is; his mother married his step-father when he was 18 months old. The step father was a violent alcoholic. He physically abused the defendant's mother, his sisters and him. He had a lonely childhood and did not make many friends. That led to him being befriended by two men who, in a sadly familiar scenario, sexually abused him. He was between 13 and 15 years old at the time. His mother was a very religious person and he grew up familiar with the Catholic Church. He completed his secondary education at a Catholic school and went on to obtain a degree and diploma in education, subsequent to which he taught in a Catholic college. In 1979 he commenced his training for the priesthood, later obtaining a Bachelor in Theology. As earlier noted, he was ordained in 1982 and started at Dominic College. He returned to Victoria in 1986 to a college there where he became deputy principal in 1988. The allegations which saw him imprisoned arose in 1992. He was defrocked and ex-communicated during his term of imprisonment and on his release, had no further involvement with the Church at all. That remains the case. While serving the 1992-1993 sentences he completed a psychosexual therapy course. He moved to Sydney on his release where he worked in various areas, including adult education, conducting his own cleaning business and managing a dental practice, which position he held until the commencement of the proceedings that ultimately lead to his imprisonment in 2015. As part of the psychology course he was undertaking in Sydney, he worked with young people around the age of 16 years, and I am told, was never tempted to re-offend. He describes the therapy as having been very beneficial, allowing him to understand his offending and provide him with the skills to avoid further aberrant behaviour. While imprisoned in Victoria he has been engaged within the prison process, holding positions of trust and responsibility. He has completed a number of varied practical training courses as well as drug and alcohol and mental health program. He has acted as a prison support worker. When transferred to this State he immediately took up work within the prison. Counsel submits that he is a completely rehabilitated and reformed person given the lack of recorded history of any similar offending, and of any offending of any significance since 1993, and given what he has both derived from and demonstrated during, both periods in prison.

A great deal has been written about the evils of child sexual abuse and the profound long term effects on the victims. The relevant sentencing factors are very clear. Cases such as the present involve grave breaches of trust. As the Victorian sentencing judge in 2015 pointed out, the trust that was breached involved both the student/teacher relationship and the trust which exists between spiritual advisor and the recipient of such advice. These breaches of trust occurred after the defendant had cultivated trust and friendship through the use of alcohol, cigarettes and other enticements, and in two cases, the offence was in the context of mild or heavy intoxication of the victim from alcohol supplied. In the third case, the defendant took direct advantage of the victim's emotional state. I am satisfied that the defendant's conduct has had significant long standing adverse affects on the victims. On the material, it is impossible to be satisfied of the

precise causative link between the defendant's admitted conduct and all of the stated consequences, particularly in the case of P who had previously been the subject of sexual abuse, but it is clear the conduct has caused very considerable emotional harm of an ongoing nature. Factors of general deterrence and condemnation, and of marking the significance of the wrongs that have been done, are paramount. I am satisfied that there are very strong signs of the defendant's rehabilitation and am prepared to accept that the element of specific deterrence is not of any great significance, but it is not to be fully discounted. I take into account the defendant's background. The fact that he himself was the subject of sexual abuse as a child is of some weight but is to be regarded in the light of the fact that he had the benefit of much tertiary education, and as an apparently rational adult, should have been able to take steps to deal with his inclinations. I note the defendant has been aware of pending proceedings in these matters since about 2019, and it was not until May of this year that he was brought to this State. With the opportunity to then deal more directly with counsel, the matters were quickly resolved by way of pleas of guilty with two counts on the indictment not being perused. He has not sought to obstruct this process in any way. Objectively, the pleas have utilitarian value and saved the victims from giving evidence. It is established that a significant discount is appropriate in the case of pleas of guilty in sexual matters.

I must take account of the totality principle by which a court is to have regard to the overall criminality of multiple offences. In this case the principle has a dual operation. That principle relates to the three counts with which I am dealing, and it also extends to taking into account sentences that have very recently been, or are being served, particularly where the offending is of a similar type. The authorities also make it clear that relevant offending and punishment occurring in different jurisdictions is subject to the principle. Although the overall time span is considerable, the present offending sits within the period covered by the Victorian sentence; at the least it can be seen as part of a course of similar conduct in this State and then continuing in Victoria. Accordingly, I take into account the length of that sentence, including the significant length of the non-parole period. Section 11(3) of the *Sentencing Act* requires a court which imposes a single sentence on an offender for more than one child sexual offence, to identify the sentence that would have been imposed for each offence, had separate sentences been imposed. Although there may be some ambiguity in the provision, I take it to mean that a court is to identify the sentence that would have been imposed for each offence if it had been imposed completely separately, and absent any consideration of the totality principle at all.

Lastly, as the defendant's counsel urged me to impose a sentence that would allow him to return to Victoria to continue to be dealt with under that regime, I should mention the relevant statutory provisions. By virtue of s 18 of the *Prisoners (Interstate) Transfer Act* if what remains of a Tasmanian sentence is less than what remains of the Victorian sentence that would see the defendant returned to Victoria, unless he makes a request of the Minister to be allowed to serve the term in Tasmania, something which would seem unlikely. I say that because Counsel informed me that the defendant has a sister in Victoria and no family support or other connections in Tasmania, and was only in this State while employed by the College. If what remains here to be served is greater, the defendant can request a transfer to Victoria but that is subject to Ministerial approvals and consents in both States. The location of the imprisonment is a matter to which some regard may be had, but not at the risk of producing artificiality.

Mr Rapson, I have set out at some length the facts of the crimes, the effects on your victims, the relevant sentencing factors and other considerations that I need to balance. Before going on I would simply again note the grave breaches of trust involved and the harm you have caused. If I were to be sentencing you for each crime completely independently of the other, I

would sentence you to 18 months' imprisonment on each count. However, the law requires me to take into account, among the other things I have mentioned, the lengthy sentence which you are presently serving. I take the view that an additional minimum time in prison to that which you are presently subject is necessary. I will impose a global term. The law is that the Victorian sentence is now deemed to be one imposed in Tasmania. Under s 71 of the *Corrections Act*, where a court imposes cumulative periods of imprisonment each with parole eligibility, the non-parole periods are cumulative on each other. In your case, in all of the circumstances I think it is appropriate to backdate the term of imprisonment to 1 March 2023 when you became eligible for parole in Victoria. You are convicted of the crimes and sentenced to three years' imprisonment to commence on 1 March 2023 and I order that you not be eligible for parole until you have served one half. I must make an order under the *Community Protection (Offender Reporting) Act* unless I am satisfied that you do not pose a risk of similar offending. I note you are on the register in Victoria for life. Although the degree of risk might now be much less, I cannot be so satisfied. I order that your name be placed on the register and that you comply with the obligations under that Act for a period of 10 years upon your release.