

STATE OF TASMANIA v KBR
COMMENTS ON PASSING SENTENCE

30 OCTOBER 2023
JAGO J

KBR, you have been found guilty by a jury of 15 counts upon the indictment, being eight counts of indecent assault, four counts of rape, one count of indecent act with or directed at a child and two counts of persistent sexual abuse of a child. The crimes were committed intermittently over a 23 year period, against six different child complainants, two of whom were your biological children and four of whom were your grandchildren or step-grandchildren. To avoid identification of the victims, I will use initials in these sentencing comments.

It is for me to find facts for sentencing purposes consistent with the jury verdicts. For the purpose of determining such facts, I may only make findings adverse to the defendant if satisfied beyond reasonable doubt they have been proved, and I may only make findings of fact in his favour if they are proved on the balance of probabilities. It is obvious from the verdicts that the jury, or in one instance the majority of the jury, were satisfied beyond reasonable doubt of the truth and reliability of the evidence of the respective complainants. I am also satisfied of the truthfulness and reliability of the testimony of each complainant, and I will sentence on the basis that each of the unlawful sexual acts, which they described in their evidence, and which constituted each respective crime committed by the defendant happened as the complainant described.

The first series of crimes committed by the defendant occurred between 1 December 1996 and 12 March 1997. In that period of time, the defendant indecently assaulted his biological daughter, R, three times across two occasions. R was 15 years old and had just finished Grade 10. The first occasion occurred when R and the defendant were alone at her grandmother's house. In the lead up to this, there had been an occasion when the defendant and R had gone for a drive and the defendant had shown her pornographic magazines. I am satisfied this was an endeavour by the defendant to groom R into accepting as normal the behaviour he intended to perpetrate upon her. At the grandmother's house, the defendant pushed R onto the bed, placed his hands down her pants and underwear and touched her on the vagina. He rubbed the outside of her vagina. R removed herself from the bed and left the room. The defendant persisted in his behaviour, came up behind her, grabbed her from behind, and again put his hand down her pants and underwear and touched her on the vagina. He rubbed her vagina on the outside. He removed his penis from his clothing, grabbed hold of R's hand and placed it upon his penis. He moved her hand back and forth on his penis whilst still touching her vagina. After the incident finished, the defendant told R that she was not to say anything to her mother because if she did, her mother would leave and R would no longer have a mother. This behaviour constitutes two counts of indecent assault. The third count of indecent assault committed against R occurred on an occasion when the defendant and R were alone together in a motor vehicle. R was seated in the driver's seat. The defendant was instructing her on her driving. He reached over and put his hand under her skirt and underwear and touched her on the vagina. He rubbed the outside of her vagina. After this incident ended, the defendant took R to a job interview and acted as though what he had done to her was normal.

The next child the defendant sexually assaulted was his son, A. Between 1 January 1996 and 31 December 1997, when A was 12 to 13 years of age, the defendant committed acts of indecent assault and rape against A on two separate occasions. The first of those occasions occurred at the family home. Prior to this incident occurring, there had been an occasion in which the defendant had called A up to his bedroom, put on a pornographic movie, and masturbated his own penis in the presence of A, telling A it was okay for him to do likewise. Again I am

satisfied this is indicative of the grooming behaviour the defendant engaged in prior to his abuse of his victims. Shortly after that incident, the defendant invited A to his bedroom. There was a pornographic movie playing. The defendant removed his penis and began to masturbate himself. He then grabbed hold of A's wrist, placed A's hand onto his penis and moved A's hand backwards and forwards in a masturbating motion. This behaviour amounts to the first count of indecent assault committed upon A. The defendant then pushed A onto the bed, pulled his trousers down and inserted his penis into A's anus. He penetrated him for one to two minutes. The act of anal rape was painful for A. Afterwards, he told him to go and "clean himself up, keep his mouth shut and not tell anyone".

Following this incident, the defendant displayed further sexualised behaviour towards A. On one occasion he invited A into the bathroom to wash his back. The defendant masturbated himself whilst in the bath and then made a joke about how the ejaculate appeared in the water. No criminal charge arises as a consequence of this act, but again it is indicative of the sexual interest and sexualised behaviour the defendant displayed towards his victims.

The next occasion of sexual abuse against A occurred in the bathroom of the family home. The defendant had asked A to assist him in washing his back. As A was doing this, the defendant began to masturbate himself. He then took hold of A's hand, placed it upon his penis and moved A's hand back and forth in a masturbating motion. This behaviour amounts to the second occasion he committed an indecent assault upon A. The defendant then instructed A to put his penis into A's mouth and told him to "suck it like a lollypop". This behaviour amounts to the crime of rape. This crime ended when the defendant removed his penis from A's mouth and ejaculated into the bath. Following this incident, he told A to keep his mouth shut and threatened him that if he told anyone, he would be taken away and there would be no one to look after the children. This comment was made in the context of the defendant's wife having a serious illness, which prevented her from undertaking a number of care duties in respect to the children. After these crimes were committed the defendant gave A cigarettes and other treats. He behaved towards him as though everything was perfectly normal.

The next victim of the defendant's sexual abuse was his grandson, C. C's father is the defendant's son. Between January 2009 and December 2010, when C was aged approximately 12 to 13 years, the defendant committed three crimes against C. The first occasion occurred at the defendant's home when the defendant and C were alone at the residence. The defendant put a pornographic movie on and invited C to sit with him and watch it. Whilst they were watching the movie, the defendant exposed his penis and masturbated himself. He told C that it was okay and that he could do the same thing. C did as the defendant instructed him. This incident finished when the defendant ejaculated in the presence of C. This behaviour amounts to the crime of an indecent act with or directed at a child.

The next crime also occurred at the defendant's house when the defendant and C were alone together. The defendant invited C to go to his bedroom. He put a pornographic movie on. The defendant exposed his penis and began to touch himself. He told C to take his pants down and bend over the bed. The defendant then inserted his penis into C's anus. It caused C pain. The act went on for about five minutes. When it finished, the defendant said to C "it didn't hurt that bad did it?....I used lube". In my view, such a statement is indicative of the often selfish, callous attitude the defendant displayed towards his victims.

The second time the defendant raped C was in a milk truck. At the time the defendant worked as a milk vendor and C had gone with him to assist with deliveries. In the early hours of the

morning, the defendant parked the vehicle in a car park and asked C to get in the back of the milk truck with him and get a drink. When C got into the back of the milk truck, the defendant shut the door and instructed C to bend over some milk crates. He pulled his penis out, used spittle on C's anus and placed his penis into C's anus. Again, this was painful for C. Afterwards the defendant behaved towards C as if everything was normal.

The next criminal conduct perpetrated by the defendant was against his grand-daughter M. M's father is another son of the defendant. The defendant maintained a sexual relationship with M between July 2011 and July 2015. M was aged between 7 and 11 when the abuse occurred. The jury were asked to consider three separate occasions on which unlawful sexual acts were committed against M during the relevant period. However, M's evidence made it clear that these were not isolated occasions and that sexual offences of the same nature were perpetrated against her by the defendant on a frequent and regular basis. M described the sexual abuse as happening "a lot", or "about 90% of the time he was there" during the relevant period. Whilst it is impossible to quantify the frequency of the abuse, I accept the evidence of M that it happened on many occasions and the abuse included the defendant variously touching her to the outside and inside of her vagina with his fingers and his tongue. The defendant will be sentenced on the basis that the three incidents were not isolated occasions.

The specific unlawful sexual acts, which constitute the crime of persistent sexual abuse of a child, as it relates to M, are as follows.

The first incident occurred at M's father's residence. M was in a bedroom with her younger brother. The defendant and his wife regularly attended the home for a social visit. On this occasion the defendant entered the bedroom and pushed the door so it was largely closed but not latched. M was sitting on the top bed of a set of bunkbeds. The defendant reached up, pulled her pants down and touched the outside of her vagina with his fingers. He rubbed the outside of her vagina before inserting one or two fingers into her vagina. The incident lasted for about five minutes. When it finished, he told M not to tell anyone or she would get into trouble. It is an aggravating factor for sentencing purposes that on this occasion, M's younger brother was in the room when the sexual abuse occurred.

The next specified occasion again occurred in the same bedroom in M's father's house. This time M was alone in the room. The defendant entered the room, took M's pants down and used his fingers to touch the outside of her vagina. He then placed his fingers inside her vagina, before using his tongue to lick the outside of her vagina and then lick the inside of her vagina. This episode of sexual abuse went on for approximately 10 to 15 minutes. Again, when it ended, the defendant told M that if she told anyone she would be in trouble.

The third specified occasion occurred in the same bedroom at M's father's house. The defendant asked M to go to the bedroom with him, sat her on the top bunk, pulled her pants down, touched the outside of her vagina with his fingers, touched the inside of her vagina with his fingers and then proceeded to lick both the outside and inside of her vagina. Again, when this incident ended, the defendant told M not to tell anyone or she would be in trouble.

The next victim of the defendant's sexual abuse was his step-grandchild, H. H's mother was in a relationship with one of the defendant's biological sons, MR. H referred to MR as her father and considered the defendant to be her grandfather. When H was aged between eight and 13, she lived with her mother and MR. During this time, the defendant and his wife would visit. It was on these occasions that he would sexually abuse H. Again, in respect to H, the

jury were asked to consider three separate identified occasions on which unlawful sexual acts were committed. Again, however, H's evidence made it clear that these were not isolated occasions and that sexual offences of a similar nature were perpetrated against her by the defendant on a frequent and regular basis. I accept H's evidence as to that and will sentence on the basis that the three specified occasions were not isolated occasions. When H was asked to recall how many times the sexual abuse occurred, her evidence was "too many times to remember". She described it as happening regularly between when she was six and when she was 13.

The first specified occasion occurred when H was alone with the defendant at his home. The defendant's wife was at the hospital. The defendant sat H down on a mat in the lounge room, removed her pants and underpants and used his hand to touch her on the vagina. He touched her on both the outside and inside of her vagina. He then used his tongue to lick her on both the outside and inside of her vagina. After the incident ended, the defendant told H not to tell anyone or she would be in "deep shit". H described being petrified after this incident had occurred.

The second specified occasion occurred at the home where H was living with her mother and step-father. The defendant was babysitting H and her siblings. The defendant came into a bedroom where H was playing with her brothers. He told her brothers to leave the room and appeared to lock the door. The defendant placed H onto the bunk bed and pinned her down. He then used his hand to touch her on the vagina. He also used his tongue to lick her on the vagina. After this incident occurred, the defendant left the room and acted as though nothing had occurred. H felt very uncomfortable.

The third specified occasion occurred at a house where the defendant was living. The defendant took H to the laundry, sat her on the washing machine, held her there, removed her pants and underwear and then used his fingers to touch both the outside and inside of her vagina. He also inserted his tongue into her vagina. After the incident ended, he told H not to tell anyone and to keep quiet about it, or "bad things would happen".

It is likely the sexual abuse of M and H was occurring at least in part at the same time. This in my view speaks to the extent of the defendant's sexual interest in young people and also his attitude of entitlement that he might treat children as mere objects to satisfy his sexual interests.

The final victim of the defendant's abuse was his granddaughter, G. G's mother is one of the defendant's daughters. On a single day in July 2019, when G was aged 16, the defendant committed three acts of indecent assault upon her. G was, at that time, staying with the defendant and her grandmother. On this day, G was alone in the house with the defendant. Her grandmother had gone shopping. The defendant called G into the bedroom. He had a pornographic video playing on a portable DVD player. He asked G to sit down and watch it with him. Whilst doing so, he asked G questions about whether she was sexually active and whether she liked having sex. Uncomfortable, G got up off the bed and walked from the room. As she did so, the defendant came up behind her and placed her in a bear hug. He placed his erect penis against her bottom and pressed it into her. This behaviour amounts to the first incident of indecent assault.

G then moved away to the living room. As she went to sit on a couch, the defendant pulled her down onto his lap. Her back was to his front. The defendant brushed his hand along her thigh and touched her on the vagina, over her clothing. As he did this, the defendant said "What

would you do if I gave you a bit of a tickle?" G responded by saying "It would be weird because you are my Pop". The defendant replied "That doesn't matter though". This behaviour amounts to the second count of indecent assault.

G moved from the couch area into the kitchen. The defendant followed her. He pulled her top out to expose her bra and breasts. He said to her "You have nice tits. I wish you weren't my granddaughter. I would fuck you myself". This was the third incident of indecent assault. Afterwards the defendant told G that she could not tell anyone about what had occurred and if she did, it would ruin his marriage to her grandmother. G did in fact immediately tell a friend about what the defendant had done to her.

The defendant's offending came to light when M bravely made a disclosure to a school counsellor. The matter was reported to police. As the investigation continued it became apparent there were further victims of the defendant's abuse and other members of the family also made disclosures over time. The defendant was interviewed by police on two separate occasions after his conduct came to light. The first interview occurred on 13 September 2019 and related only to M. The second interview occurred on 13 November 2019 and raised a number of the further allegations. The defendant denied any sexual acts towards any of the complainants. He suggested the allegations may be the result of some collusion.

The defendant is now 70 years of age. He has no prior convictions, which in my view impact upon the sentencing exercise. There are dated matters of assault police and common assault, but they are of such an age that they carry no weight. The defendant has a strong work history being the primary provider for his family until he became a full time carer for wife. I note however that in a matter of this nature, prior good character provides little by way of mitigation. The defendant is in poor health. He suffers from a number of medical conditions including Parkinson's disease, diabetes, COPD, hypertension, osteoarthritis and depression. Prior to his remand in custody, he was taking a number of medications, including some for pain relief which are no longer available to him because of prison policy. He is finding his adjustment to an alternate medical regime difficult. I accept the defendant's time in custody will be more difficult because of his age and poor health. He is likely to be vulnerable within the prison environment. I also accept the defendant's incarceration will be difficult for his wife. She suffers from a serious medical condition and the defendant has been her full-time carer for a number of years. His absence will undoubtedly be keenly felt by her. The defendant's wife requires the assistance of a full-time carer and alternate arrangements will need to be made, which may not be easy.

The defendant's advanced age and associated poor health are, of course, relevant to the assessment of sentence, as is, the impact of his incarceration upon his wife. In my view however, none of these factors carry any significant mitigatory value, particularly when balanced against the objective seriousness of the defendant's crimes and his high level of moral culpability for the offending. It may well be that given the defendant's age, he faces the prospect of spending a considerable period of his remaining life in prison. I bear that in mind in formulating the appropriate sentence, but, that factor cannot, in these circumstances, justify the imposition of an unduly lenient sentence.

The fact is the defendant perpetrated these crimes over a 23 year period. He manipulated the complainants into silence by using the threat of the destruction of the family and adverse consequence for their loved grandmother. By so doing the defendant was not only able to continue his sexual abuse but he gained the benefit of living freely within the community during

that time. He has avoided responsibility for his conduct until now. On the other hand, each of the complainants has had to live with the consequences of his criminal behaviour from the time the abuse was perpetrated upon them. It would be inappropriate and unjust for considerable leniency to now flow because of the defendant's age and poor health.

The gravity of the defendant sexually abusing his biological children, grandchildren and step-grandchildren hardly needs to be stated. It was deviant and incestuous behaviour. Over a 23 year period the defendant sexually abused six young people, all of whom were members of his extended family. The breach of trust involved was enormous. The defendant bore a responsibility to nurture, care and protect his children and grandchildren, but instead he took advantage of his position of trust within the family in order to abuse each of them. In so doing, the defendant destroyed important family bonds, including those of a father and child, and has left the extended family unit irreparably damaged. The abuse occurred at a stage in each of the complainants' lives, which was of importance for their psychological, sexual and emotional development. Much of the abuse was committed within the family homes where the children were entitled to feel safe and loved, but instead their homes were, I suspect, often permeated by anxiety, distress and fear about what might happen to them. This behaviour was protracted and it was purposeful. It was not isolated nor spontaneous.

The defendant's behaviours encompassed all manner of sexual abuse, including penetrative and non-penetrative acts. The acts by reason of their nature and incestuous character were degrading and humiliating. The defendant groomed his victims to lower their inhibitions and used threats and coercion to maintain their silence. It is aggravating, in my view, that the defendant used the threat that the family unit, and/or their grandmother would be adversely impacted if the complainants disclosed the abuse. Such manipulation must have exacerbated the feelings of powerlessness each complainant experienced. The decision to expose the abuse must have been a terribly difficult one. Young children were burdened with the choice of remaining silent and maintaining the family, or protecting themselves and risking decimation of the family unit. There is no question that the behaviour of the defendant involves exceptionally serious moral and criminal wrongdoing.

He has caused lasting and profound psychological and emotional harm to his six victims. The sexual abuse he subjected them to has been traumatic, it has marred their childhood and significantly impacted their adult lives. I have received victim impact statements from five of the six complainants. Those statements eloquently reveal the extent and nature of the harm caused by the abuse and the pain and hurt caused by the consequential destruction of family relationships. The statements courageously describe the pervasive and adverse psychological impact that is understood and accepted to flow from crimes of this nature. In respect to the complainant from whom I did not receive an impact statement, I nevertheless sentence on the basis that it is presumed that sexual crimes against children cause harm. In any event, the impact these crimes have had upon each complainants was also apparent from their evidence. The enormity of the conflicting emotions they all experienced and the impact that has had upon them was plain. I am satisfied the defendant's conduct has had a profound and deleterious effect upon each one of the complainants, which is likely to be lifelong and the true effect of which is quite frankly, immeasurable. It can only be hoped that the finalisation of sentence may offer the opportunity for some healings to begin.

I have regard to the aggravating circumstances I am required to take into account by virtue of the *Sentencing Act* 1997, s 11A, in particular sub-sections (1)(a),(c),(d) and (da). I take into

account generally the factors enunciated as relevant to sentencing child sexual offences in *DPP v Harrington* [2017] TASCCA 4.

The defendant is not entitled to any discount on his sentence for pleading guilty. Each of the complainants were required to endure the ordeal of giving evidence and whilst the defendant is certainly not to be punished for exercising his right to trial, I have no doubt each complainant found the court process a difficult one. The defendant has demonstrated no remorse nor insight into the gravely serious nature of his conduct.

The sentencing goals, which are prominent in sentencing a matter of this nature, are community protection, punishment, denunciation and vindication of the victims and recognition of the individual harm they have suffered. The sentence must make clear to the defendant and others that those who commit sexual abuse against children, can expect to receive harsh punishment. This Court has an obligation to endeavour to protect children and deter such abuse by the imposition of strong sentences that reflect society's condemnation of such behaviour.

Because I intend to impose a global sentence, I am required to identify the sentence which would have been imposed for each crime, separately. This identification will not take into account considerations of totality or proportionality arising from the overall sentence. The sentences I would impose for each crime separately, in this case, are periods of imprisonment as follows:

- Count 1 - 10 months
- Count 2 - 12 months
- Count 3 - 8 months
- Count 4 - 12 months
- Count 5 - 4 years
- Count 7 - 12 months
- Count 8 - 4 years
- Count 9 – 6 months
- Count 10 - 4 years
- Count 11 - 4 years
- Count 12 – 7 years
- Count 13 - 8 years
- Count 14 – 6 months
- Count 15 - 6 months
- Count 16 - 6 months

The aggregate sentence to be imposed is to be moderated by proportionality and totality. In respect of proportionality, the overall sentence must reflect that these crimes were committed against separate complainants and at different times and that each complainant experienced significant harm as a result of the separate offending against him or her. The totality principle requires me to take a last look at the aggregate sentence to ensure that it is proportionate to the defendant's overall criminality, and that he is not subjected to a crushing sentence, not in accordance with his record and prospects. The application of such principles must, of course, be balanced and judged against the gravity of the overall offending. Further, a sentencing court in dealing with multiple serious crimes, each of which warrants a lengthy sentence, must bear in mind the reality that the severity of a sentence increases exponentially with length (see Wood J in *DPP v Harrington*). I take into account all of these considerations in assessing the sentence. The proper application of these principles means the only possible sentence is a

significant term of imprisonment. I will make allowance for parole, given the defendant's age and health status but only after he has served a term which adequately reflects the strong need for punishment, community protection and deterrence.

KBR, you are convicted of each count upon which you have been found guilty. I make an order under the *Community Protection (Offender Reporting) Act 2005*, directing that the Registrar cause your name to be placed on the register, and that you comply with the reporting obligations under that Act, for the remainder of your life. I impose a global sentence. You are sentenced to imprisonment for 21 years from 27 September 2023. I order that you are not eligible to apply for parole until you have served 13 years of that sentence.