

**STATE OF TASMANIA v JASON LYLE SAWARD**  
**COMMENTS ON PASSING SENTENCE**

**14 FEBRUARY 2024**  
**JAGO J**

Mr Saward, you have pleaded guilty to three counts of possession of child exploitation material occurring firstly on 31 May 2022, then between 26 December 2022 and 8 February 2023, and then again between 8 February and 17 April 2023. You have also pleaded guilty to one count of distribution of child exploitation material between 26 December 2022 and 8 February 2023, and one count of accessing child exploitation material between 8 February and 17 April 2023.

On 30 May 2022 police executed a search warrant at a youth shelter where you were staying. This was as a consequence of police receiving notifications from staff and other residents that you had been conducting internet searches suggestive of child pornography material and had items in your room, suggestive of an interest in that subject, such as a pair of female children's underwear, a small bra and a dummy. As part of the search police seized your Nokia C30 mobile phone. Subsequent forensic examination of it revealed a total of 62 images and videos that amounted to child exploitation material. These images and videos had been downloaded and were stored within the pictures folder on the phone.

The images and videos were analysed by Tasmania Police and categorised according to the Interpol Baseline four category systems. Category 1 of this system describes files that depict at least one real, pre-pubescent child under the approximate age of 13 years, involved in a sexual act, witnessing a sexual act or where the material is focused or concentrated on the child's anal or genital region. Category 2 involves material that is illegal, but not classified as baseline. Category 3 involves material that is not illegal, but may contain important clues or identifying information to assist investigations in respect to Category 1 or Category 2 images. The files located on your phone on 30 May 2022 involved 58 images and one video that were classified as Category 1, three images that were categorised as Category 2 and 18 images that were categorised as Category 3.

Whilst I do not intend to outline in detail the nature of the images and videos, because quite frankly it is sickening to do so, examples that were indicative of the overall content, include: an image of a female child aged approximately 10-12 years, lying on her back naked with an adult male kneeling in front of her, penetrating her vagina with his penis; an image depicting a child between the approximate age of 6-8 years, lying naked on her stomach with an adult male holding his penis against the child's anus, apparently about to penetrate the anus; an image of a child between the age of 5 and 7 years, pressing a male's erect penis against her face and licking the male's genitals. There were also images of young female children in sexually explicit poses with what appeared to be semen on their stomach and vagina areas.

On 1 June 2022, as a consequence of what was found on your phone, police arrested you. You were charged on complaint but bailed.

Between December 2022 and January 2023, whilst you were on bail for the charge arising from the May 2022 search, Tasmania Police received notifications from the National Centre for Missing and Exploited Children regarding an Instagram account under the name "Jason Johnson". That account had been involved in the exchange and distribution of child exploitation material. Police investigations revealed the account was operated by you. Police executed another search warrant at your residence on 8 February 2023. On this occasion a Nokia C30 mobile phone was seized from you. You provided police with a passcode to the phone. You were not arrested at this point but police took the phone for further forensic

examination. That forensic examination revealed that you had used the social media platforms Instagram and WhatsApp to engage with others in the exchange and distribution of child exploitation material.

It seems communications between you and others were initiated through the use of various code words and phrases to indicate an interest in child exploitation material. Examples of material sent by you to others, which were indicative of the types of material that you distributed generally, included:

- A video clip of an 8-12month old female baby, lying naked on her back with an adult male penis rubbing against the outside of her vagina until ejaculation;
- A video clip of a female child aged between 12 and 14 years, lying on her stomach, with duct tape over her eyes, being penetrated vaginally and orally by two adult males simultaneously;
- A video clip of an approximately 10 to 12 year old female, lying naked on her back in a bath tub with her legs held up to her chest. An adult male standing over her, exposing his penis and urinating upon her.

As part of the communications, you sent messages to other users offering to send them child exploitation material. At other times you responded to requests for such material. You would also request new material from other users in exchange for the material that you distributed. In your requests for new material you would particularise the type of material you were seeking. Some of those requests related to being provided with material which involved the sexual abuse of babies and toddlers.

On 10 January 2022, you created a "community" on WhatsApp, which was titled "Free Pics for Trade". The title was accompanied by a pizza emoji, which apparently is a symbol used on social media to signify an interest in child exploitation material. This community involved five participants, including you. Through this community you exchanged child exploitation material with others in a group chat setting. Both Category 1 and Category 2 material was exchanged within this chat. In total, you distributed child exploitation material to 11 different users via this chat. That included distribution of Category 1 material on at least 113 different occasions.

The Nokia C30 mobile phone that was seized from you during the search on 8 February 2023 was forensically examined. That examination revealed 130 images and videos that amounted to child exploitation material, downloaded and stored on the phone. Of the images, 125 were Category 1 and five were Category 2. There were an additional 30 related images and videos which were Category 3.

The Category 1 material located on the phone on 8 February 2023 contained the following videos that were indicative of the overall content:

- A video depicting an approximately 10 year old female, lying on her back, naked. An adult male was standing over her, repeatedly pulling her legs apart and inserting his penis into her vagina whilst the child struggled against him. The child could be seen to be visibly upset with tears coming from her eyes. She could be heard to be sobbing.
- A video depicting an approximately 8 year old female, standing naked in front of an adult male. The adult male was attempting to force his penis into her mouth. The child was crying. The adult male forcefully penetrated her mouth with his penis and then held the child's head in place. The child was distressed.

- A video depicting a female infant between 12-18 months, lying on her back as an adult female held her legs apart and an adult male rubbed his penis against her bare vagina until ejaculation. The child was crying.

Following the forensic examination of this device, police arrested you on 17 April 2023. You were conveyed to the Devonport Police Station. At that time, you had in your possession a Telstra mobile phone. That was examined and seized for a full forensic examination. That forensic examination revealed that you had been using a social media application, known as Tik Tok 18 plus. Via that application you accessed and viewed videos that amounted to child exploitation material. Whilst doing so, you saved several videos amounting to child exploitation material within the Tik Tok 18 plus account. You did this by "liking" the video which allowed it to be saved for repeated viewing. Examples of videos that were accessed and saved by you included:

- A video depicting an approximately 2 year old female child, lying on her stomach on a bed whilst being penetrated by an adult male penis;
- A video depicting a 10 year old female, penetrating her own vagina with her fingers.

Also on the Telstra phone were located a total of 19 images and videos that amounted to child exploitation material. This material was not protected by any PIN code and could easily be accessed by anyone who was in physical possession of the phone. The files located on the Telstra phone were categorised as follows: seven Category 1 images/videos, 12 Category 2 images/videos, and 29 Category 3 images/videos. Examples of the Category 1 material located on the phone included:

- A video clip depicting a 5 to 6 year old female, lying naked on a bed whilst an adult male pushed his penis against her vagina and anus, struggling to insert it. Eventually, the penis was inserted its full length within the child's vagina.
- A video depicting a 7 to 8 year old female, lying naked on her back whilst an adult male repeatedly inserted his penis into her vagina.
- A video depicting a male and female child, both aged approximately 10 to 12 years, kissing each other with the male child sucking on the female child's breasts and the female child performing oral sex on the male child, before the male child penetrated the female's vagina with his penis.

The Category 2 material located on the Telstra phone included various cartoon videos of female children being vaginally penetrated by the penis of an adult male, and cartoon videos of male children having oral sex forcefully performed upon them by adult females.

On 17 April 2023 you participated in a video record of interview with police. You told police that you did not know how you became interested in child exploitation material but it "just ended up happening". You acknowledged receiving sexual gratification from the child exploitation material. You said your interest started when you were about 16. You told police you found it difficult to find romantic partners and had never found anyone that cared about you. You said you had difficulty interacting with people of your own age. You told police you had no specific preferences when it came to child exploitation material. You also told police you wanted to move on from viewing this type of material and had taken steps to do so by deleting your Instagram account. Following the interview you were charged and detained in custody. You have been in custody since then.

You are 19 years of age. You have no prior convictions. You had a difficult upbringing. Your parents separated when you were approximately 2. You were left with your mother, but she

had a number of difficulties of her own. She essentially abandoned you and re-located to the mainland. You were left in the care of your grandmother. You lived with your grandmother until you were approximately 14. During this time you had no contact with your father, and only sporadic contact with your mother.

You left your grandmother's home when you had a falling out with her. You returned to live with your mother, but by that time she had re-partnered. Her partner was violent towards both you and she and you experienced considerable conflict within that home. You endeavoured to return to your grandmother's home, but by that time her mental health had deteriorated significantly. Ultimately, your grandmother suicided when you were 16 years of age. From that point, you essentially lived a transient lifestyle, experiencing homelessness and living in various youth shelters. You lived a socially isolated existence without family support.

Because of the concerning nature of these crimes, and particularly given your young age, I obtained a forensic mental health report in respect to you. The report indicates that you had been diagnosed with Attention Deficit Hyper Activity Disorder at about 13 years of age. You were treated for a period with medication, but ceased that after a short time because you felt the medication was adversely impacting upon you including episodes of self-harm. You began to use cannabis instead.

In 2021 you were referred to Child and Youth Mental Health Services. It was noted that you had experienced complex early childhood trauma and it was possible that you had suffered from Foetal Alcohol Spectrum Disorder. A limitation in intellectual functioning was also noted. A formal cognitive assessment recorded a full scale IQ of 70, which is in the borderline impaired range.

You reported to the author of the Forensic Mental Health report that in the months prior to this offending, you were experiencing consistently low mood. You had broken up with your girlfriend. You were feeling isolated and withdrawn and living a lonely existence. You said your interest in child pornography developed after you had happened upon it whilst "surfing the internet". You were unable to explain why your interest in child exploitation material increased to the extent it did. You suggested to the report writer that your fantasies at the time were "borderline underage girls". You were unable to explain why very young children appeared in some of the material in your possession, similarly, you were unable to explain the violent content contained within some of the material.

The author of the report notes, and I quote, *"the formative development of temperament, personality, identity and relationship skills appears to have been significantly impacted by early life adversity... further trauma through the life span, including exposure to domestic violence and physical abuse, with periods of homelessness, is likely to have impacted on his personality development and interpersonal skill. Consistent with disrupted relationships in early life and childhood diagnosis of reactive attachment disorder, where emotional regulation and impulse control are markedly impacted by disrupted care giving, Mr Saward displays personality dysfunction in a dis-social and borderline pattern, meeting criteria for personality disorder. Relevant features to Mr Saward include emotional dysregulation, periods of self-harm, shifting and poorly defined inter-personal boundaries, identity disturbance and episodes of impulsive and destructive anger."*

The report writer also notes, and I quote, *"while Mr Saward does not have a formal diagnosis of autism and does not appear to meet diagnostic criteria for same, the documented possible*

*exposure to alcohol in utero and his small stature, combined with his neurodevelopmental profile, raise suspicion of partial foetal alcohol spectrum disorder. This condition presents with a range of neuro-developmental difficulties, including some features similar to autism, where adaptive behaviours and social cognition are impaired... The interaction between his neurodevelopmental vulnerability and experiences of neglect and early life trauma appears to have resulted in difficulty with relationships, a low sense of personal competence and negative patterns of behaviour. Developmental trauma and social cognition deficit may have also made it more difficult for Mr Saward to understand the perspective and needs of others, further exacerbated by the remoteness of virtual victims. His substance use disorder and dis-regulated low moods, may have also impacted on his impulse control and judgment."*

Whilst there is nothing in the report to establish that mental impairment contributed to the offending, such as to raise considerations of the nature outlined in *Verdins*, I am of the view that the effects of your traumatic upbringing, coupled with your neurodevelopmental impairments and personality vulnerabilities, are serious and long-standing and, in a general sense, are relevant to understanding the development of your problematic sexual interest in this material. The damaging circumstances of your upbringing, coupled with your other limitations, left you in a position whereby you were socially isolated and inept at forming supportive relationships. It was against this background that the crimes occurred. That said, there is nothing to suggest that you did not appreciate the extent of the depravity of the material and the wrongfulness of your behaviour. There is nothing raised in the report to suggest that factors of general and personal deterrence, denunciation and protection of the public do not remain predominant sentencing factors.

This is a serious example of crimes of this nature. Whilst the number of images and videos you possessed was not of a significant number, the subject matter of much of the material was disturbing and grave. It involved very young children being abused in invasive, degrading and at times, violent manners. In some of the images, the children were visibly distressed. You continued this behaviour over a nearly 12 month period, despite police intervention and despite the fact you were on police bail. This suggests a high level of interest in material of this nature and speaks to the need for personal deterrence. Your behaviour in distributing this material was irresponsible and reckless. You had no way of knowing to whom you were sending the material and what the recipient might do with the material thereafter.

It is now well recognised that child pornography offences put children everywhere at risk of grave sexual abuse by encouraging the creation of child pornography to meet the market and the demand for it. The children depicted in the material you accessed, possessed and, in turn, distributed are real victims. Some of the material, as I have noted, was in the highest category of depravity although all of the material had the capacity for harm. By distributing it, and participating in the chat room conversations, you increased the risk of encouraging pederastic thoughts in others and thereby increased the chance of creation and dissemination of child pornography material. The level of depravity and brutality in some of this material is high and that has a direct relationship to the potential and actual harm suffered by these children.

I take into account your absence of prior convictions, your early pleas of guilty and your ultimate co-operation with the authorities and the administration of justice. I also take into account your age when these crimes were committed. You remain a youthful offender and your rehabilitation remains a relevant consideration, but ultimately, the need to deter others from accessing, possessing and distributing material of this nature remains the predominate

sentencing consideration. It must be made known to those who are inclined to access and possess such material, whatever their age, that severe punishment will follow for doing so.

Having balanced all relevant considerations, the only appropriate sentence is one of imprisonment. I will, however, suspend part of the sentence in order to reflect your age, lack of prior convictions, your pleas of guilty and the personal circumstances I have outlined. The suspension of the sentence will also provide an opportunity for supervision by Community Corrections.

I make the following orders. You are convicted of all matters to which you have pleaded guilty. I impose one sentence. You are sentenced to 20 months' imprisonment commencing 17 April 2023. The last ten months of that sentence will be suspended for a period of two years on the condition that you are not to commit another offence punishable by imprisonment during that time.

I also make a Community Correction Order, with an operational period of 12 months to commence upon your release from custody. The Court notes that the conditions referred to in s 24(5b) of the *Sentencing Act* apply to this order. These includes that you must report to a probation officer within three clear days of the day that you are released from custody. In addition to the core conditions, the order shall also include the following special conditions:

- 1 You must, during the operational period of the order, attend educational and other programmes as directed by the Court or a probation officer;
- 2 You must submit to the supervision of a probation officer, as required by the probation officer;
- 3 You must submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer.
- 4 You must undergo assessment and treatment for alcohol or drug dependency as directed by a probation officer;

I am required to make an order under the *Community Protection (Offender Reporting) Act* 2005 unless I am satisfied you do not pose a risk of committing a reportable offence in the future. Having regard to the circumstances of this case, I cannot be so satisfied and, accordingly, 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, commencing from the date of your release from prison.

I order that the three mobile phones seized by Tasmania Police be forfeited to the State of Tasmania.