

STATE OF TASMANIA v KDL
COMMENTS ON PASSING SENTENCE

21 JULY 2016
WOOD J

The defendant has pleaded guilty to two counts of maintaining a sexual relationship with a young person under the age of 17 years.

In relation to the first count, the defendant maintained a sexual relationship with a young person, I will refer to her as Miss T, in 2005 and 2006 when she was 14 years of age. She had turned 14 in October 2005 and the sexual relationship commenced the following month, on or about 1 November. She was in grade 9 and the defendant was aged 18. The relationship continued beyond her 15th birthday, but given the statutory scheme, it was not unlawful once she turned 15 in view of her consent and that the defendant was not more than five years older than the complainant, being four years older than her (s 124(3)(a) of the *Criminal Code*).

The defendant and the complainant had met at a party and he was aware of her age, as she had told him. She went to his house after the party where they had unprotected sexual intercourse. During November and December 2005 she would regularly attend weekly parties in Austins Ferry. She told her parents that she was staying with a friend, but when she was ready to leave the party she would send a message to the defendant and he would collect her and take her to his home where they had sexual intercourse.

During the period of the indictment, sexual intercourse occurred on a regular basis. There are four specific occasions of sexual intercourse that can be identified. These occasions each amount to the crime of sexual intercourse with a young person under the age of 17 years. One such occasion was on New Year's Eve at the defendant's house. Another occasion was in February 2006 when the defendant booked a room at a motel and they stayed the night. The complainant was living at home with her parents and her parents did not let the defendant stay overnight. Another occasion was in March 2006 when they had sexual intercourse in the defendant's car.

The sexual relationship was consensual and they had a "boyfriend and girlfriend" kind of relationship. However, this is not to suggest that the relationship was kind and loving during the indictment period. The relationship deteriorated and, as that occurred, the defendant became increasingly aggressive, controlling and violent towards the complainant.

He was also manipulative. There was an occasion when he told her he had harmed himself because of an argument that they had had.

The complainant became isolated and cut off from friends and family as a result of his behaviour. He told her that she should not live with her parents. She listened to him and when she was 14 years of age she moved in with the defendant and his mother. She lived with them for two years and disengaged with her own family. At one point, the defendant and his mother took her to Legal Aid to take out a restraint order against her family.

The complainant ended the relationship with the defendant on New Year's Eve in 2007. Later, after the period of the crime, in March 2007 when the complainant was 15 and half, she discovered that she was pregnant and terminated the pregnancy. By then, she had reconnected with her own family.

I turn now to consider count 2. The defendant maintained a sexual relationship with a complainant, Miss G, for a period from September 2009, when she was 13 years of age, until approximately January 2013 when she was 16. They met in September 2013; Miss G had turned 13 approximately six months before. The defendant was 22 years of age. They became acquainted through mutual friends. In a text message sent to the defendant before they met, the complainant told him she was 13. He replied that that was alright as he did not want to miss out on something that could potentially be great. They met a number of times and then she went to his home. His mother cooked them dinner and they ate it in the defendant's bedroom. He had unprotected sexual intercourse with her. They began a relationship and sexual intercourse took place regularly at his home. He lied to his mother about the complainant's age. The complainant began living with him.

She was taking the contraceptive pill, but the defendant did not like her taking it and after some four months she stopped taking it. The couple were having sexual intercourse regularly, daily or every second day.

At the commencement of the relationship the defendant was kind and generous to the complainant. However, after a couple of months he became obsessive and angry. He would accuse her of cheating on him and he would push, slap and choke her. He belittled her and told her that if she ever left him he would kill her. I am conscious that these acts of aggression and violence do not form part of the charge. However, it is relevant to have regard to the nature of the broader relationship in which the sexual relationship was maintained.

Sexual intercourse occurred on a regular basis and was consensual, aside from one particular occasion. There are three specific occasions of sexual crimes relied upon. There are two instances of sexual intercourse with a young person under the age of 17 years: the first occasion of intercourse mentioned, and a second occasion of consensual intercourse when the defendant insisted that he and the complainant have intercourse even though she had her period and was in pain. The third specific occasion is an isolated incident of non-consensual sex. I turn to that incident now.

In October 2012, when the complainant was 16 years of age the defendant raped her.

The complainant was living with the defendant at the time and she returned home after spending time with her father and brother. The defendant was angry and showed her a photograph of herself on Facebook that had attracted a comment from a male. The defendant called her a slut and a whore and accused her of cheating on him. He pushed her onto the bed and grabbed her face. He had vaginal sexual intercourse with her. She was frightened and sobbing. He said to her to “act like the slut you are and love it”. He then turned her over onto her stomach and anally raped her before resuming vaginal intercourse.

After that incident the defendant’s behaviour continued to be obsessive and controlling. There was an incident in December 2012 when she received a text message from the defendant telling her that his mother had suffered a heart attack and the complainant needed to come home. In fact, the defendant’s mother was fine and he wanted the complainant to come home because he had discovered she had created a new Facebook account and he did not want her to have one.

The complainant ended their relationship, but resumed it one week later because the defendant was not eating and would call her and cry and beg for another chance. She finally terminated the relationship in January 2013.

In January 2014, the complainant informed police that she had been in a sexual relationship with the defendant. During the police investigation the relationship with Miss T came to light.

The relationships have caused significant emotional harm to the complainants. Miss T lost contact with her family for a time and missed out on their love and support. She lost self-confidence, has needed counselling, and still suffers from anxiety.

Miss G describes an adverse impact upon many aspects of her life such as the relationship with her parents. The three-year relationship with the defendant changed her as a person and isolated her from “the world”. There has been an adverse impact upon her relationships and she has difficulties with trust. She suffers from anxiety and feels depressed and worthless. Some days, in her words, she just feels like “damaged goods”.

The defendant is now aged 29. He has prior convictions including a conviction for assault committed in June 2009 involving Miss T. He approached her in the street and grabbed hold of her arm. For that offence and another offence of common assault, he was sentenced in September 2009 to a term of six months’ imprisonment, part of it suspended. It is notable that, having spent time in custody, he was

not deterred from pursuing his relationship and the crime committed against Miss G. Leaving aside driving offences, he has a conviction of common assault in 2005 and attempted burglary in 2008 which attracted a suspended sentence of two months' imprisonment, conditional upon his good behaviour for two years. He committed an offence of dishonestly acquiring a financial advantage in 2012, presumably a relatively minor offence noting the compensation order was for \$135.

There are matters with respect to his circumstances that are mitigatory. He pleaded guilty and saved the complainants the ordeal of giving evidence. In the past three years he has dedicated his time to caring for his mother who is in poor health. She suffered from a brain aneurysm and has cognitive and memory deficits. She is forgetful and needs supervising. She has left the oven on and caused a fire in the past. She is likely to be diagnosed with the onset of dementia over the next couple of years. She relies heavily on the defendant, he supervises her medication, and her daily living tasks such as cooking and cleaning, and drives her to appointments.

The defendant is a talented musician and composer. Since being charged he has retreated and become socially withdrawn, spending time on his computer and pursuing his interest in music.

He has a solid work history. He left high school to work in a pizza shop and worked his way up to being a night manager. More recently, he has worked in a bottleshop. He has been in receipt of a disability pension because of a diagnosis of bipolar and borderline personality disorder. Neither is suggested to have relevance to the charges. In the past, he has consulted a psychiatrist, Mr Jacob George. The defendant was diagnosed with depression when he was 21 and is prescribed an antidepressant.

During the period of his relationships with the complainants, he loved them and they became a part of his family unit. He was conscious of the significant age difference with Miss G and he knew he should not be in a sexual relationship with her. He regrets that the complainants feel damaged and hurt by his relationship with them and he is sorry that he has caused that suffering.

He has been in custody since 18 April 2016 and has found prison to be a very difficult and punitive environment.

These are serious crimes. Both complainants were too young to be in a sexual relationship, and while the relationships were consensual, the sentence must seek to deter others and protect other young people from harm. Young people do not always know for themselves that being in a sexual relationship at a young age, when they are emotionally immature and there is a power imbalance in the relationship because of a significant age disparity, is damaging. Both cases demonstrate that harm. The courts are conscious of the prospect of harm and an important sentencing goal is general deterrence.

The second count is particularly serious. The complainant was only a child at 13 years of age. The sentence must send a clear message to offenders that sexual relationships with girls as young as 13 and 14 are intolerable to our community. A sexual relationship between a 22 year old and a young person, commencing when she was just 13 years of age, requires particular denunciation. It is anathema to a caring society that is protective of children. The crime of rape is particularly serious. The complainant was 16 years of age. The defendant acted in complete disregard of her obvious distress. If he had been charged with that crime alone a sentence of at least four and a half years' imprisonment would have been required, taking into account his plea of guilty. In conclusion, a lengthy prison sentence is required.

The defendant is convicted of both crimes. He is sentenced to a global sentence of six years' imprisonment from 18 April 2016. He is not to be eligible to apply for parole until he has served the minimum of half of that term.

His long term risk of sexual recidivism is assessed by Community Corrections as in the moderate to high range. I make an order under the *Community Protection (Offender Reporting) Act 2005* and I

order that his name be placed on the register and that he comply with the obligations under that Act for a period of six years following his release from prison.

He must pay victims of crime compensation levies of \$100 within 28 days of his release from prison.