

STATE OF TASMANIA v KHAYNE KENNETH HORNE
COMMENTS ON PASSING SENTENCE

16 MAY 2024
WOOD J

The defendant Khayne Kenneth Horne has pleaded guilty to an indecent act with or directed at a child, and three counts of penetrative sexual abuse of a child. The sexual acts were committed over a period of approximately three months from January to May 2022. The defendant was aged 18–19 years in this period and the complainant was aged 13 years. She turned 14 approximately four months after the commission of the crimes.

The crime of penetrative sexual abuse of a child or young person is committed when an adult has unlawful sexual intercourse with a person who is under the age of 17 years. Lack of consent is not an element of the crime.

The defendant has known the complainant since they were young children. Some years ago, the defendant's mother married the complainant's father, which meant the defendant and the complainant were step-siblings for a time. The marriage ended well before the commission of these crimes. At the time of the offending, the defendant was in a relationship with the complainant's older sister who was approximately the same age as the defendant, and they were living together. The complainant and her mother were living nearby. The complainant regularly spent time with her sister and the defendant at their house, and the defendant would regularly stay at the complainant's house. The defendant was both aware of her age and that she was in a relationship with a female partner at the time.

In January or February 2022, the defendant and the complainant were alone in her bedroom. The defendant was watching pornography on his mobile phone. The complainant was playing a video game and then started to watch the pornography. She told the defendant that if he wanted to masturbate, she was fine with it. The defendant began to do so, and the complainant asked if she could touch his penis. He said yes, and she poked it with her finger. He continued to masturbate and ejaculated while the complainant played the video game.

On a subsequent occasion, the complainant was at the defendant's address. The complainant's sister was asleep in the bedroom and the defendant was with her. The complainant was in an outdoor living area and sent the defendant a text message asking him to come out and see her. He did and they went to the bathroom together where they engaged in vaginal sexual intercourse. He did not use a condom and withdrew prior to ejaculation. The complainant had not engaged in vaginal sexual intercourse before.

Before the intercourse occurred, the defendant told the complainant that participating in sexual intercourse was "her decision" and she did not have to. He also told her that it would be a "learning experience" for her and, afterwards, that she was learning and becoming "good at it".

Some months later, the complainant and the defendant went to a beach near the defendant's home and engaged in vaginal sexual intercourse. The complainant asked the defendant if he had a condom and he said no, and the intercourse took place without one. He did not ejaculate during intercourse; he withdrew and masturbated to ejaculation. Prior to sexual intercourse taking place, the complainant asked the defendant what he wanted her to do. The defendant told her it was up to her.

In about March or April 2022, there was a subsequent occasion when the complainant accompanied the defendant on a walk to a friend's house at night. On the way home, the

defendant spoke about wanting to masturbate. He sat on the grass and the complainant sat next to him. The complainant told him she could do whatever he wanted, and the defendant replied it was up to her. He placed his penis in her mouth and his hands on top of the complainant's head during this act of intercourse. After about four minutes, he removed his penis and masturbated to ejaculation.

During this period, the complainant's mother noticed that her daughter's behaviour had changed and she had become extremely moody. In late May, the complainant disclosed to her mother that she had been having sex with the defendant. The matter was later reported to police and, subsequently, the complainant participated in a video-recorded statement.

Before the complainant made her video statement, the defendant voluntarily attended the Bellerive Police Station and told police that he wanted to make a confession. During a video-recorded interview, he made frank admissions about his conduct, the subject of the charges. He told police he was aware the matter had been reported to the police and said he wanted to tell the truth and get it off his chest. He agreed that, in view of the complainant's age, he should not have been engaging in sexual intercourse at all. When interviewed by police about the first occasion of vaginal intercourse, he said he wished he had had a condom and would have used it if he had. When asked about another occasion, he told police he felt bad for having sexual intercourse with the complainant because of the effect it would have on his girlfriend.

I have a victim impact statement from the complainant which shows the crimes have had a serious effect upon her emotionally, and upon her psychological wellbeing.

The harm done to the complainant in this case illustrates the importance of protecting children and the importance of prohibiting adults from engaging in sexual acts with them. It shows how detrimental and damaging it is for children to engage in sexual activity. They are simply too young to make informed decisions and do not have the maturity to understand the implications of engaging in sexual activity, or the resulting harm that is likely to occur.

Here, the complainant was of a particularly young age at only 13 years old, and the defendant was trusted as someone in the inner circle of the complainant's family.

The defendant's personal circumstances must be taken into account.

He has been assessed by clinical and forensic psychologist, Dr Jennifer Wells. The defendant has borderline range intellectual functioning. He does not have an intellectual disability as such, but his functioning sits on the borderline between normal and disability. He has been diagnosed with Severe ADHD – Combined type, involving a persistent pattern of inattention and/or hyperactivity and impulsivity at a level that interferes with functioning or development.

He also has a history of trauma as a child. He witnessed and experienced domestic violence inflicted by several of his mother's partners, and he was sexually assaulted at eight years of age.

His understanding of sexual boundaries and the age of consent was impoverished, and he had received no form of education about those matters. He was exposed to pornographic material as a child by male adults in the family setting. He started using cannabis at 16 years of age after moving in to live with his father, who had a long-standing addiction and, thereafter, ceased taking his ADHD medication, which led to a deterioration in his symptoms which were ongoing at the time of his offending.

In Dr Wells's opinion, the defendant's abilities to exercise appropriate judgment and to appreciate the wrongfulness of his conduct was impaired as a result of the combination of his ADHD symptoms, particularly his impulsivity, his borderline cognitive capacity, his history of sexual trauma, and his early sexualisation. The combination of these contributed to his commission of the offences.

Also significant as a contributing factor was the defendant's lack of understanding at the time. He believed his conduct was not wrong because he had taken steps to ascertain the complainant's consent, making it clear to her that whether she engaged in sexual activity was her decision. He did not appreciate at the time that sexual activity with the complainant was wrong and against the law because of her age, or that she was too young to give informed consent. He only realised this after he was charged, and the police and his mother explained it to him.

As a result of these contributing factors, his moral culpability is reduced to an extent.

I have mentioned particularly serious aspects of this crime, such as the complainant's young age, the breach of trust, and the harm caused to the complainant, but there are also factors which distinguish this case from others and which mean that it is not as serious as some other crimes which are committed and which come before the courts. The defendant did not pressure the complainant, or manipulate her or coerce her into sexual intercourse, and his behaviour was opportunistic rather than calculated. There was a limited disparity in their ages and less again in terms of their maturity.

The defendant has found the process of being charged and being involved in the criminal justice system a daunting experience. He has experienced distress and symptoms of anxiety and depression as a consequence and received counselling from a social worker, Andrew Doolan, with whom he has engaged well. He has also engaged in drug and alcohol counselling and is making progress. He has drastically reduced his use of cannabis and is willing to cease use once his medication for ADHD is available. That has not been administered as yet because he has not completely ceased his use of cannabis, but it is expected that this catch 22 situation will be addressed.

Dr Wells notes the defendant is now fully aware of the law regarding the age of consent for sexual behaviour. She considers him unlikely to engage in similar behaviour again in the future. Factors indicative of a likely risk of sexual offending are not present here, such that the defendant did not engage in any coercive behaviour, he does not have any attitudes that support or condone sexual violence, and he has not sought to minimise or deny his wrong-doing. He was someone who felt guilty about his activity and that he had been unfaithful to his girlfriend, suggesting a solid foundation for future moral development and learning, and that Mr Horne is, in essence, someone who is motivated to act responsibly.

The defendant himself was immature and a youthful offender. He pleaded guilty at an early stage and as soon as his lawyer obtained a psychologist's report indicating fitness to plead. This has saved the complainant the stress associated with having to give evidence. He has no prior convictions and has casual but permanent employment as a factory worker.

The sentence I impose today must reflect the importance of protecting children and the need to deter adults from engaging in sexual activity with children. It must also reflect the harm caused to the complainant. The defendant now has an appreciation of his wrong-doing and is someone

who is, in my view, most unlikely to reoffend in this way. He has difficulties and vulnerabilities which will benefit from further and ongoing intervention and supervision. He has been open to and co-operative with treatment and counselling. A sentence that gives significant weight to his rehabilitation is appropriate.

Having given the matter careful consideration, I am satisfied that a wholly suspended term of imprisonment should be imposed. I impose a global sentence of 7 months' imprisonment, the whole of which is suspended for a period of two years from today. It is suspended on very strict conditions. A condition of suspension is that you are not to commit another offence punishable by imprisonment during that period of two years. Another condition is that you must perform 70 hours of unpaid community work. Further, you must be subject to the supervision of a probation officer for a period two years and comply with all reasonable directions of that probation officer.

I make an order that you report under the *Community Protection (Offender Reporting) Act 2005* for a period of two years.