

STATE OF TASMANIA v ZAC
COMMENTS ON PASSING SENTENCE

20 AUGUST 2024
JAGO J

ZAC, you have pleaded guilty to one count of persistent sexual abuse of a young person. The offending took place during the period 1 April 2023 to 31 August 2023. At the relevant time, you were aged 22 and the complainant was aged 15.

In early April 2023, you and the complainant met at a party [address stated] where you were both living. You chatted and got along well and thereafter you began communicating with each other on Snapchat. You would contact the complainant and ask her to go for drives and spend time with you. She agreed. The two of you also began calling each other regularly and would spend hours on the telephone talking to each other. A strong friendship developed between the two of you. Over time, you both developed feelings for each other and the relationship became a sexual one.

The first sexual contact occurred in April or May 2023. You and the complainant had gone for a drive. The complainant's brother was with you. He had fallen asleep in the back of the vehicle. You and the complainant kissed. On the drive home, you apologised to the complainant for kissing her. She replied, "No, it's fine". After this occasion, you and the complainant began to spend time together daily.

On 27 May 2023, the first instance of vaginal sexual intercourse occurred. Again, the two of you had gone for a drive in your vehicle. The sexual intercourse occurred in your vehicle. You wore a condom and ejaculated. There were a further six occasions in which vaginal sexual intercourse occurred. The complainant kept track of the specific dates on which sexual intercourse had occurred on an application she used to track her menstrual cycles. Those dates were 17 June 2023, 24 June 2023, 3 August 2023, 4 August 2023, 15 August 2023 and 16 August 2023.

On one of those occasions, part way through the intercourse, you removed the condom you had been wearing after the two of you had a conversation about making the intercourse "feel better". You continued to have intercourse and ejaculated. The complainant was not on any contraceptive medication at the time. The following morning, the complainant had to organise to be provided with emergency contraception from the local pharmacy.

On one occasion during sexual intercourse, you admitted to police that you had, "choked" the complainant. No further detail is provided about this. I infer it was part of some erotic sexual play, but it is impossible to assess the extent or impact of this act on the complainant. What is of note, is that at the age of 15 it can readily be assumed the complainant did not fully appreciate or consider the possible adverse effects of such an act. On another occasion you admitted to spanking the complainant on her buttocks whilst having sexual intercourse. This left her with a bruise which she told a friend about.

On 12 September 2023, a friend of the complainant called Lifeline to report concerns she had for her. Tasmania Police were notified. Police spoke to the complainant's friend, who outlined what the complainant had told her about the relationship. They then spoke to the complainant. The complainant denied there had been any sexual relationship between her and you. She said that you were good friends. On 14 September 2023, you participated in an interview with police. Initially, you denied that the relationship with the complainant was sexual, but after almost an hour of questioning by police, went on to admit the sexual nature of the relationship.

You said that the relationship had started as a friendship and "evolved into more". You said the relationship was one that was "emotional and caring" and that he had feelings for the complainant. You made the admissions to which I have referred of "choking" her and spanking her.

Following your admissions, the police again spoke with the complainant. This time she admitted the sexual nature of the relationship and said that you had previously asked her not to disclose the true nature of the relationship to police. She went on to provide details of the nature of the relationship which were largely consistent with the admissions made by.

You are 22 years of age. You moved to [address stated] when you were 17 to live with your stepfather. Your stepfather had been in your life since your early childhood and you identified him as your father. Your biological father had not been part of your life since you were about two years of age. He has since passed away. When you met the complainant, you had just ended a de facto relationship of some two years duration. You were feeling lonely and vulnerable. You and she connected and there were mutual feelings of affection.

You have no prior convictions, which is not uncommon for crimes of this nature. You have recently relocated to Queensland. Your mother has been diagnosed with pancreatic cancer. It is a terminal condition, and she is undergoing regular chemotherapy and an intensive treatment regime. You moved to Queensland to be with her and assist her in her care. You are also assisting in the care of your younger brother who has autism. The current circumstances facing you and your family are obviously most difficult ones. I take them into account generally, as they are relevant to the likelihood of reoccurrence of offending given your focus is now very much on assisting your mother through the last period of her life, but they are not determinative of this sentencing exercise.

I have read and considered a forensic psychological report provided on your behalf. It notes you were experiencing "situational stress" following the breakdown of your relationship at the time you met the complainant but there is no mental health factor or other consideration that in any way reduces your moral culpability. The report notes that you are at low risk of sexual offending in the future.

I take into account your plea of guilty. It was entered at an early stage when the matter was still before the Magistrates Court. You are entitled to credit for that. The complainant was aware from an early stage that she would not be required to give evidence.

Your crime is to be distinguished from more serious examples, which involve a greater age disparity, a breach of trust, disparity in terms of power and control within the relationship, relationships where there are non-consensual acts and/or degrading sexual activity. Here, the consensual sexual intercourse occurred for only a relatively short period of time. The relationship appears to be one of mutual affection. The complainant has provided a victim impact statement in which she speaks fondly of you and describes the relationship as a happy and supportive one. She does not assert that she has been adversely affected in any way. However, it is most important to remember that she is only 15 years of age. Her consent to the sexual nature of the relationship was therefore informed by her emotional and developmental maturity at the time. Similarly, her understanding of the impact the relationship has had upon her is limited by her age and life experience. Harm may yet manifest itself with the passage of time and her increased maturity and understanding.

There is no suggestion in my view, that your behaviour was predatory, manipulative or coercive. I note your request that she not tell police as to the true nature of the relationship. I do not consider that to be reflective of you being manipulative within the relationship, but rather I accept it is indicative of your panic. There is no question that you were well aware of the wrongfulness of your conduct and wanted to prevent it being disclosed to the authorities. It was selfishly self-protective behaviour, but eventually you made full admissions, including telling the police about aspects of the sexual relationship that would otherwise have been unknown. As noted, you have pleaded guilty and I accept that your plea of guilty is indicative of an acceptance of responsibility and genuinely held remorse.

The law which makes such conduct criminal exists for the protection of children and young people. The law recognises that young people require protection, not only from adults who may be minded to take advantage of them, but also from their own poor and immature choices, often made at a time when they lack the emotional and intellectual maturity and judgment to fully appreciate the consequence of their choices. It is well understood that the consequences for a young person of engaging in premature sexual relations, even where consensual and caring, can be detrimental and damaging, and the true extent of the impact may not emerge until much later.

Crimes of this nature are always serious because of the need to protect young people. The sentence must reflect the need to protect the broader community by deterring others in a similar position who may be tempted to act in the same way. The sentence must also reflect the need to punish and denounce such acts. The seriousness of your offending must, in my view, be marked with a period of imprisonment, but I intend to suspend that period considering the nature of the relationship and your personal circumstances, including what I assess to be solid prospects for rehabilitation.

ZAC, you are convicted of the crime. Given the contents of the psychological report, I think the risk that you may commit another offence of this nature in the future is small, but because of the circumstances of this crime, I am not satisfied that you pose no risk. I therefore must 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 a period of three years from today. I sentence you to a term of imprisonment of two years. The whole of that period of imprisonment will be suspended on condition that for a period of two years you commit no offence punishable by imprisonment.

ZAC, I explain to you that if you do commit any offence punishable by imprisonment, and I emphasise the word "any", during the relevant period, you can be brought back to this Court and an application made that you serve the period of imprisonment. The law is that a judge must activate it unless it is unjust to do so.