

JWE, you plead guilty to three counts of incest. You were charged with three counts of rape but the State accepted your plea to the alternative charge in satisfaction of those counts. In each case the victim is your biological daughter. From when she was three you had little contact with her until in 2021, when she was 17, she moved from NSW to live with you. You lived in adjoining rooms in the motel you managed in regional Tasmania. Your de facto partner at the time lived in NSW.

Your daughter had significant mental health issues. She suffered from bipolar disorder, anxiety, depression and suicidal ideation. She had medication to help her sleep. She had been advised to seek company if feeling suicidal.

You had sexual intercourse with her on three occasions between 27 July 2021 and 11 August 2021. You were 47. The circumstances were these. On 27 July 2021 she came to your room with suicidal thoughts. She took her prescribed medication, smoked some cannabis you gave her and fell asleep on the couch. You suggested that she get into bed which she did. While she was there you undressed her, and yourself, positioned yourself on top of her, and penetrated her vagina with your penis until you ejaculated. She then dressed in the bathroom, went back to her room, showered and cried.

The two other occasions of sexual intercourse occurred on 3 August 2021 and 11 August 2021 in almost identical circumstances. She went to your room having experienced suicidal thoughts. On each occasion you were not there but she fell asleep in your bed. When you returned you removed her clothes, undressed yourself, positioned yourself over her and penetrated her vagina with your penis until you ejaculated. After each occasion she dressed and returned to her room. When this happened on 11 August she told her fiancé and her mother, who both lived interstate, what had happened. Her mother arranged for her to be taken to her great aunt's house who she also told what had happened. Concerned she may be pregnant a test was undertaken but was negative. You admitted to your own partner that you had had sex with your daughter because you "wanted her to know what sleeping with a real man was like." You gave further details including that on each of these occasions you had fondled your daughter's breasts, touched her vagina and had her perform oral sex on you. Later examination of your phone revealed repeated messages from you to your daughter inviting her to come to your room to cuddle you, and an internet search history which showed that on at least 55 occasions between 24 July and 10 August 2021 you had sought out and viewed daddy-daughter oriented pornographic videos. Forensic analysis disclosed the presence of semen in a high vaginal swab taken from the complainant and semen containing DNA matching yours on a piece of her underwear.

You were confronted with these allegations at the end of August 2021. Soon afterwards you left the State, abandoning your home and employment. You committed no offence by doing so because you had not yet been charged and were not on bail. You were not charged until a complaint was filed in January 2023. You were arrested in NSW on 15 March 2023 and extradited back to Tasmania. You were in custody for 117 days until released on bail on 9 July 2023. I will take that period into account in determining the commencement date of the sentence I will impose. You were taken into custody again on 15 August 2024 at the conclusion of the sentencing hearing.

You are now aged 50. You have prior convictions for dishonesty and driving offences. In 1996 you were sentenced to imprisonment for four years and six months for aggravated armed robbery. You have no prior convictions for sexual offences, but that is of little weight in a case like this. Your daughter would not likely have been in your care otherwise. I regard these as serious crimes. You breached the trust your daughter placed in you, and the trust of others who allowed her into your care, supervision and authority. You took advantage of your influence and her vulnerability arising from your relationship, her age and her fragile mental health to indulge your own perverted sexual proclivities. These were not spontaneous or momentary lapses. You did not give her cannabis intending to facilitate the crimes but her use of the drug added to her vulnerability. You did not wear a condom and so the sexual intercourse was accompanied by the risk of pregnancy and the transmission of sexual disease. Thankfully neither of those things occurred although she was in fear of pregnancy for at least some time.

You are entitled to mitigation from your plea of guilty even though the case against you seems to me to have been overwhelming and your plea a recognition of the inevitable. It facilitates justice by avoiding the need for a trial. Most importantly it saves the complainant from the considerable additional trauma of having to give evidence. On the other hand, you avoided the chance that you may have been found guilty of more serious crimes. The absence of consent is not an element of the crime of incest. Care is required that you not be sentenced for rape. It is to be inferred that the State could not prove beyond reasonable doubt that the complainant did not freely agree to sexual intercourse. However, one purpose of the law is to protect young and vulnerable persons including from their own frailty or misjudgment. It was your obligation to protect your daughter. Instead, you abandoned your parental responsibility. It was you who instigated the sexual acts in a predatory manner for your own selfish purposes. Your offending did not last for a prolonged period but each count involved separate criminality.

In the course of sentencing I was referred the decision of the Court of Criminal Appeal in this State in *R v G* [1993] TASSC 70. It concerned an application by the Crown for leave to appeal against sentence imposed on a plea of guilty to three counts of incest committed by a father on a daughter when she was 17 and 18. The only ground of appeal was whether a sentence of imprisonment for six months on each count to be served cumulatively, and cumulatively with a further sentence of six months for indecent assault, a total of two years, was manifestly inadequate. The majority determined that, for a range of reasons which were particular to that case, it was not. It took into account that the complainant, at age 17, was regarded by the law as having capacity to lawfully consent to sexual intercourse. The majority dismissed the appeal but expressly noted the absence of an established sentencing range for the crime. It follows that there will be cases involving different degrees of seriousness depending on the nature of the relationship, the age and personal characteristics of the victim and the nature of the sexual acts. I was referred to two other sentences for incest which provide some guidance. However there are too few sentences and the circumstances are too disparate to establish a sentencing range. Useful reviews of sentences for incest were undertaken by the Court of Appeal in Victoria in *Reid (a Pseudonym) v The Queen* [2014] VSCA 145 42 VR 295 and *DPP v Dalgliesh (a Pseudonym)* [2016] VSCA 148. Some circumstances of those cases were different and they also involved statutory sentencing provisions which do not apply here. However comments about the seriousness of the crime made in *Dalgliesh* were affirmed by the High Court at 262 CLR 428.

Since *R v G* was decided community attitudes to sexual offences against young persons have developed considerably, partly because of the appreciation of the harm to victims which may result. The complainant was, for legal purposes, not a child. However, the prohibition of sexual relations between a father and a young daughter is not just based on the fact that it is morally

wrong, offends societal taboos, carries a genetic risk and is a violation of the individual and social role of family, but also because of the inherent risk of long term psychological harm to victims. Here, there is no victim impact statement but that does not mean that there is no impact. The risk of harm to your daughter was added to by her already fragile mental health which was known to you.

I take into account all of the aggravating circumstances specified in the *Sentencing Act* 1997, s 11A, which have application. They have already been mentioned. I will allow for parole. The nature of this crime makes clear to me that you pose a risk of future sexual offending. It is my duty to impose a sentence which properly reflects community abhorrence for this type of crime.

JWE, you are convicted of three counts of incest. 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 10 years from your release. I impose one sentence. You are sentenced to imprisonment for four and a half years from 20 April 2024. I order that you not be eligible for parole until you have served half of that term.