

STATE OF TASMANIA v NMB
COMMENTS ON PASSING SENTENCE

27 AUGUST 2024
JAGO J

NMB, you have been found guilty by a jury of four counts of indecent assault committed against two complainants, whom I shall refer to as "B" and "S". The two counts relating to S were found as alternatives to the crime of aggravated sexual assault. It is my task to find facts for sentencing purposes, but in this case the facts substantially follow the verdict. To find you guilty, the jury must have accepted both the truth and reliability of each of the complainants' evidence beyond reasonable doubt, (with the exception of course of not being satisfied to the requisite standard of penetration in respect to the two counts pertaining to S). I will sentence in accordance with their evidence. To the extent it is necessary to make findings of fact, I note I may only make findings adverse to you if satisfied beyond reasonable doubt they have been proved, and I may only make findings of fact in your favour if they are proved on the balance of probabilities.

Each complainant was your step-daughter. You had been in a relationship with their mother for several years and had known B and S since they were very young. You had lived with them for much of their lives. You and the complainant's mother share two children together. B was 12 and 13 when these crimes were committed upon her. S was 5 and 6 when you committed the crimes upon her. You were a significant part of B and S's life and in a position of parental responsibility in respect to them.

At times, the living circumstances for the family were fairly chaotic. Difficulties were experienced in obtaining stable accommodation and the family often had to live in overcrowded conditions resulting in the children having to share beds or sleep in the lounge room. The relationship between you and the complainants' mother was also a tumultuous one. There were frequent arguments and, at times, violence.

The first act of indecent assault committed against B occurred between October 2017 and October 2018 when B was 12. There were not enough beds in the unit where the family was then living for the children to have their own beds so B was sleeping in a bed with you and her younger sisters. She had sore feet. You offered to massage her feet. You moved your hands up her legs and touched her and rubbed her on her vagina. You touched her vagina both under her clothing, on her skin, and over her clothing. B pretended to be asleep initially but then said she needed to go to the toilet and moved away from you. She spent the rest of the night sleeping in the lounge room.

The second act of indecent assault against B occurred approximately one month later when B had turned 13. On this occasion B was sleeping on the couch in the lounge room. You were in the same room playing your X-box. You laid down behind B on the couch and put your arm around her waist. You used your hand to touch her vagina on the outside of her clothing. You did this for what felt to B like a few minutes, before B moved away from you because she did not want it to happen again. She stayed awake in the lounge room until you went to the bedroom to go to sleep. She described in her evidence feeling scared that you would come back out if she fell asleep on the couch.

The first act of indecent assault committed against S occurred between September 2012 and September 2013 when S was five. At that point, her mother was living in a different house than you. She had been to the supermarket with you. On the way back from the supermarket you and S went to your unit. She sat on the couch. You sat down beside her and hugged her.

You put your hand onto her vagina and rubbed it in a circular motion. In her recorded witness statement, S was asked: "Was he rubbing on top of your private part, inside your private part or something else?" She answered, "I don't really know, just that he was rubbing it and then my ... he'd been rubbing it, his, like, fingers were going in to, like, I don't really remember too well." Obviously, given that evidence, the jury were not satisfied beyond reasonable doubt there had been penetration of the vagina, but they must have accepted S's evidence that an indecent assault occurred. I also accept S's evidence and will sentence on the basis that the touching was directly to her skin on top of her vagina.

The second act of indecent assault committed against S occurred between September 2013 and September 2014 when S was aged six. On this occasion, she was on the couch at home. She was in her night gown. You sat beside her to watch television. You placed your hand onto her vagina and you rubbed it. She was not wearing underwear under her night gown. Your indecent assault again involved skin to skin contact. The two incidents that were perpetrated upon S were not done in isolation. S described such behaviour as occurring "more often" than the two specific occasions she was able to clearly recall.

Both girls were very young when you indecently assaulted them, S particularly so. Section 11A of the *Sentencing Act* has application. It is aggravating that at the time three of the crimes were committed, the complainants were under the age of 13 years, and in respect to the fourth crime, B had only just turned 13. It is also aggravating that at the time of each crime, the complainants were under your care, supervision and authority. You were their step-father. You had an obligation to nurture, care and protect them but instead you took advantage of your position of trust within the family to abuse each of them.

The main of the sexual abuse was committed within their family home where they were entitled to feel safe and loved. Instead, their family home was permeated with anxiety, distress and fear about what might happen to them. Both complainants were vulnerable. As noted, their family home was chaotic and they were exposed at times to family violence. Their mother had mental health difficulties and she did not provide them with strong support. Both B and S saw you as a positive in their life. You provided for their basic needs, such as food and clothing. They felt a terrible sense of guilt about disclosing what you had done to them because of the inevitable division it would create in their family. Indeed, you told S not to tell anyone or you would get into trouble. It was not until February 2020, when B was experiencing difficulties in coping, that she finally disclosed your behaviour to her father's partner. When S was asked whether anything had happened to her, she also disclosed your abuse of her.

Both children have been badly affected by your crimes. I have carefully read and considered their impact statements. Both complainants have experienced anxiousness, a sense of insecurity and have had difficulties in sleeping. They no longer trust people but most significantly for both of them, their relationship with their mother and younger siblings has been destroyed because of your behaviour. Important family bonds have been lost to them because of your criminality. The impact statements of B and S describe the type of pervasive and adverse psychological impact that crimes of this nature almost inevitably cause. Your conduct has had a significant affect upon each complainant.

You are 40 years of age. You have a significant criminal history consisting of crimes and offences of dishonesty, serious driving offences and a significant history of family violence. On 24 November 2016, you were sentenced to a period of imprisonment of six weeks, which was wholly suspended for a period of two years. The State submit this suspended sentence

was in operation when the crimes against B were committed between October 2017 and November 2018. The State have made application that this suspended sentence be activated. There is contest, however, as to whether the suspended sentence was lawfully operative at the relevant time and the application has been adjourned to a later date. In any event, the sentence imposed for two counts of breaching a Family Violence Order by sending text messages to a previous partner in February 2016, is reflective of your poor history for committing family violence offences.

By way of further criminal history, in August 2019, you were sentenced to six months' imprisonment, the execution of which was again wholly suspended for the crime of blackmail. In October 2023, you were sentenced to nine months' imprisonment for 15 counts of drive a motor vehicle whilst a prescribed illicit drug was present in your oral fluid. You were only released from that period of imprisonment on 24 July 2024. You were returned to custody on 9 August 2024 following the jury returning their verdicts in this matter. I take into account that you were only at liberty for a few weeks between serving that sentence and your return to custody in respect to these matters.

You have four children. One of your children, a 16-year-old son, lost their mother to suicide in January of this year. I am told it concerns you that you have not been able to support him because you have been incarcerated. You had a difficult upbringing. You grew up in a home where violence was commonplace. You have been diagnosed with Bi-Polar and are appropriately medicated for that condition. You have struggled, however, with an illicit drug addiction for many years. You started using cannabis whilst you were still in high school and, as is so commonly seen, escalated to the use of methyl amphetamine soon thereafter. Your use of methyl amphetamine has been problematic for many years and is reflected in many of your prior convictions.

You are not entitled to any discount on your sentence for pleading guilty. Each of the complainants was required to give evidence and whilst, of course, you are not to be additionally punished for exercising your right to trial, I have no doubt each complainant found the Court process to be a difficult one. You have demonstrated no remorse nor insight into the serious nature of your conduct.

Sentencing goals which are prominent in sentencing a matter of this nature are deterrence, punishment, denunciation and recognition of the harm you have caused to each complainant. The sentence must make clear to you and others that those who commit sexual abuse against children can expect to receive harsh punishment. The Court has an obligation to endeavour to protect children and deter such abuse by the imposition of strong sentences.

Because I intend to impose a global sentence, I am required to identify the sentence which would have been imposed for each crime separately. This identification does not take into account considerations of totality or proportionality arising from the overall sentence. The sentences I would impose for each crime separately in this case are periods of imprisonment as follows:

- Count 1 - 9 months
- Count 2 - 8 months
- Count 3 - 10 months
- Count 4 - 10 months

The aggregate sentence to be imposed is to be moderated by principles of proportionality and totality, whilst still reflecting that these crimes were committed against separate complainants at different times, and that each complainant experienced considerable harm because of your offending against her.

I make the following orders. NMB, you are convicted of each count upon which you have been found guilty. 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 a period of 12 years following your release from custody. I impose a global sentence. You are sentenced to imprisonment for two years and six months, commencing 9 August 2024. I order that you are not eligible to apply for parole until you have served 16 months of that sentence.