

The defendant, CJ, has pleaded guilty to one count of persistent sexual abuse of a child. The period of offending was between 28 March 1982 and 27 March 1992, the complainant – who I will simply refer to as M – was born on 28 March 1977. That, of course, make her between 5 and 14 years old at the relevant times. The defendant was aged between 22 and 31 years. The background is that M was three when her parents separated. She remained at the family home with her mother and two older brothers. When she was about four, M's mother commenced a relationship with the defendant and shortly after he moved into the family home. Because M's mother worked long hours and her two brothers were at school and regularly spent long periods away, it often happened that M and the defendant were the only ones in the family home. The State asserts that on an ongoing and persistent basis over the relevant period, the defendant sexually abused M in the family home, such abuse generally consisting of touching and rubbing her vagina and her breasts underneath her clothing. Examples of this are putting his hand down the front of her shorts and touching her on the vagina or putting his hand up her top. All the touching happened underneath her clothing. Further, the defendant would have regular baths with M during which he would sit her between his legs and run his erect penis up and down her back. Within the context of this ongoing conduct, four specific occasions have been identified. At a time in 1982, M got into bed with the defendant, with her mother in another part of the house. The defendant grabbed her hand, placed it on his scrotum and rubbed her hand in a clockwise direction. She was able to see his penis. She pulled her hand away, rolled over and left. Nothing was said. This conduct amounts to indecent assault. Occasion 2 was when M was approximately 9 to 10 years old. She had bad eczema. Her mother told her that the defendant was going to put cream on her. While this was happening, he said to have been breathing heavily and paid "particular attention" to her groin and breasts where she did not have eczema but he rubbed the cream into those areas nonetheless. That is another indecent assault. Occasion 3 was when M was between 10 and 12 years old. The defendant asked her lay beside him in a beanbag. She did so, and he put his hands down the back of her pants, manoeuvred her legs apart, put his hand in her underpants and touched her vagina achieving a degree of penetration. M got up and ran out of the house and hid until she knew her mother had returned home. This conduct is likely to have amounted to aggravated sexual assault, given that the crime was enacted on 26 November 1987. At the least it is an indecent assault. Occasion 4 was when M was between 12 and 14 years old. It also involves an indecent assault. One morning when the defendant was getting ready to go to work, M went to the toilet where the defendant was. He took her to her bedroom and she laid on the bed. He lifted her legs, pulled her top or nighty up, pulled her underpants across and told her that is how she was sleeping last night. He said "I always watch you when you are sleeping. I wish I could see more". He then left the room. When M was in high school she consulted a counsellor and confided that there were inappropriate things happening at home. Child Protection Services became involved. M's mother was informed but the defendant denied wrongdoing. Shortly after M left the family home to live with her father in Western Australia. While there she disclosed to one of her brothers that the defendant had sexually abused her. Ultimately in November 2019, M reported the matter to Tasmania Police. In January 2020 the defendant was interviewed. He said that everything that happened at time was cloudy claiming to have suffered an incident in 2010 giving rise to brain damage, because of which both his short term and long-term memory were affected. He either denied or did not recall the specific incidents that were put to him. The State says that medical records obtained in the investigation do not support his claim about memory loss.

I have a victim impact statement of the complainant dated 15 September 2024. The harm which the law presumes to arise from this type of offending has materialised in this case. M says that she has long dreamt of the day she would be vindicated, having told the truth with no one believing her. She says she forgives the defendant but would like the court to take into account what his conduct did to her as a person, and how devastating the impact on her was. She notes her innocence was taken from her as a little girl, and her life choices were coloured by childhood sexual abuse by someone who was supposed to protect her. Her life has been plagued by chronic drug and other addictions, where drug addiction leading to psychiatric episodes. She has had multiple periods of rehabilitation and treatment and assistance from counsellors, psychotherapists and psychiatrists. She feels she was robbed of an education, friendship and healthy relationships with the opposite sex, and does not believe to this time that she has had a proper and healthy relationship with a man. She has suffered eating disorders, self-loathing and body dysmorphia. She concludes by asking for mercy for the defendant even though he did not give that to her.

The defendant is now 65 years old. At the point in time at which the offending ended, he had no recorded history of offending. He has accumulated some traffic related matters since then but there is nothing of any significance. He is presently living with his adult son and his elderly mother. He and his son care for the mother with her day-to-day needs. He is presently on a disability support pension following a serious workplace incident about 20 or more years ago which necessitated him having multiple surgical interventions. He seems to have an unremarkable childhood. He was educated to grade 10 level, entered the workforce immediately and was an industrious person until his accident. I was also told he suffered a major heart attack in 2010 to which the memory difficulties are attributed. It is not clear when the relationship with M's mother ended but the defendant's adult son came of a relationship after that one. He and the mother of his son separated when the son was only about 18 months old due to her substance abuse and ultimately, in 2009 he obtained full time care of his then 11 year old and has raised him. The defendant's counsel noted the defendant's relatively young age when the conduct commenced, just turned 22, but of course the period of offending ended when he was 31. Counsel accepted there are aggravating factors present, to which I will come in a moment. At the same time, it was noted that some factors which might have made the conduct worse were not present. There is no suggestion of the presence of others, threats of or actual or physical force beyond the acts themselves, or of facilitating acts by way of alcohol or drugs, nor of degrading or humiliating acts done while committing the sexual acts. I accept the submission that the plea of guilty is a significant matter in reduction of penalty. It saved M from the ordeal of giving evidence and avoided the need for family members to do the same. It can be taken as facilitating the course of justice. It was a relatively early plea in the sense that having been charged in early 2020, there were factors at play which caused some delay in finally resolving the charge or charges to be faced. The plea was indicated in June of this year, accepted in the next month and the defendant pleaded guilty on 5 September 2024. At no stage was there was an indication that this matter was destined for trial. I note the nature of his offending may lead to some adversity in prison, and that his health condition may also create some vulnerability for him.

The law is that a person sentenced to this crime based on three or more identified occasions of sexual offending should ordinarily suffer the same penalty as if the offences were charged separately, subject to moderating factors of proportionality and totality. If the evidence shows that the extent of the crime goes beyond identified occasions it is often not possible to do more than make an estimate of that extent, to take into account the identified offences were part of

ongoing abuse. This case falls into that category, and I treat the ongoing abuse as the same general type as that detailed in the identified occasions. The significant level of gravity of this offending goes without saying. Sexual abuse of children is a matter of very high community concern. Factors of general deterrence, denunciation, condemnation and vindication are paramount. In this case, there are specific aggravating factors as mentioned in s 11A of the *Sentencing Act*. For the most part, M was under the age of 13 years. She was at all times under the defendant's care and supervision. He was effectively M's stepfather and so the offending is a significant breach of trust. That M seems to have forgiven the defendant is very largely an irrelevant factor. Such crimes as these in particular, are seen as crimes against the community.

Mr J, because of the general need to protect children, your serious criminal conduct calls for a weighty response. You deprived the complainant of a stabilising environment and effectively deprived her of a decent late childhood and early adolescence. Your conduct caused long term disabilities and difficulties. The complainant was entitled to expect to be safe in your home and in your company. As I have noted, you betrayed that position of trust. I do take into account your age at the time and your present age, and the period that has lapsed since the end of the offending. I take into account your other personal circumstances. You are entitled to have the appropriate sentence reduced by a significant degree because of your plea of guilty. You are convicted of the crime and sentenced to four years' and nine months' imprisonment to commence on 24 September 2024. I order that you not be eligible for parole until you have served one half of that term. I am required to make an order under the *Community (Protection Offender) Reporting Act* unless I am satisfied that you do not pose a risk of similar offending. Having regard to the period which has lapsed since this offending, the fact that there is no recorded history of offending in a similar way since then, and the family responsibilities you have taken on, I am satisfied that there is not such a risk as to warrant placing your name on the register. I decline to do so.