

STATE OF TASMANIA v RDA
COMMENTS ON PASSING SENTENCE

15 OCTOBER 2024
JAGO J

RDA, you have been found guilty by a jury of one count of aggravated sexual assault. The inevitable conclusion that arises from the verdict is that the jury accepted the complainant gave an honest and reliable account of what you did to her. You will be sentenced on the basis that your criminal conduct was as described by her. The crime was committed by you sometime between September 2001 and June 2002. The victim of your crime was a young girl who was friends with your children and who would regularly visit at your home.

The complainant, and her older sister, went to the same school as your children. The complainant's older sister and your eldest daughter were very good friends and they spent considerable periods of time together. The complainant would go most places with her eldest sister with the result that the complainant would attend your home whenever her older sister visited. She was also friendly with your other children.

I am satisfied the complainant, and her sister spent a considerable amount of time at your home during the relevant period, including staying overnight, because their home was a chaotic and neglectful one. Their mother did not provide well for them, and they were often left to fend for themselves. The complainant described in her evidence that she found your home to be a caring and safe environment, and that it was a fun and happy place. Given the close relationship between your eldest daughter and the complainant's eldest sister, I am satisfied you would have been aware of their family circumstances, and thereby known that the complainant was vulnerable and without appropriate family support.

You treated the complainant in a favourable manner. You showed her affection, allowed her to sit on your lap and made her feel special. You would give her lollies and tell her that she did not have to share the treats with the other children. I am satisfied this was deliberate behaviour directed at grooming her, so she would be less resistant to your sexual advances.

On the night the crime was committed, the complainant was at your house, sleeping over. She was in the lounge room on the couch pretending to be asleep. The other children were in the bedroom. She thought it was funny to pretend to be asleep and to be able to stay up later than the other children. You approached her whilst she was on the couch. You said things to her like, "I know you're awake" and "wakey wakey". She did not open her eyes. You put your hand down her trousers and started tickling her around the top of her vagina. You massaged the outside of her vagina for some time before inserting a finger into her vagina. The complainant continued to pretend to be asleep whilst this was occurring. Eventually, you stopped, withdrew your finger, and told her that she could go off to bed.

The complainant was only six or seven years of age when you committed this crime upon her. She was vulnerable and she trusted you. You breached that trust. I will sentence you on the basis that the complainant was under your care, supervision and authority at the time the crime occurred. That fact, and her age, are aggravating circumstances pursuant to s 11A of the *Sentencing Act*. Whilst there was no formal arrangement associated with the complainant's attendance at your home, I am satisfied that she was regularly there because she felt safe and secure there compared to the circumstances at her own family home. You took advantage of that situation to commit a serious crime upon her.

Your crimes have had a terrible impact upon the complainant. I have read her Victim Impact Statement. It is unnecessary for me to traverse all that she has outlined. It is sufficient to say that she described the type of stress, anxiety, upset, uncertainty and trauma that is sadly so often experienced by victims of sexual abuse. I acknowledge that the complainant's home life was also a most difficult one, and the effect of the trauma she suffered within that environment is inevitably intertwined with the effect of the trauma she suffered because of your abuse. However, it is well understood that the impact of sexual crimes upon children is often profound and is frequently the cause of long-term serious harm. I am satisfied that your crime gave rise to significant, most likely life-long, psychological harm for the complainant.

You are now 60 years of age. You have relevant prior convictions. In 1998, you served a sentence of imprisonment for 16 counts of defilement. You subsequently formed a relationship with the victim of that crime and went on to have children with her. In 1993, you were convicted in the Supreme Court of South Australia for a crime that is referred to on your record as "unlawful sexual intercourse". It appears to have involved what this jurisdiction would categorise as an indecent assault. You were sentenced to imprisonment for a period of four years, with a non-parole period of three years, but the operation of that sentence was suspended on condition you be of good behaviour for a period of two years.

In October 2006, you were sentenced by this Court, having been found guilty of the crime of maintaining a sexual relationship with a young person. The complainant in that matter was seven years old. The crime occurred between March and November 2002, so a similar time frame to when you committed this crime. You were sentenced to three years' imprisonment for the crime of maintaining a sexual relationship with a young person.

I accept that these prior matters occurred a long time ago, but they are relevant to the your moral responsibility, particularly given this crime occurred around the same time as the offending in respect to your son. Sentencing goals of general deterrence, protection of children and vindication of the victim are just as important now as they were when these crimes were committed.

For the past 21 years, you have been in a relationship with your current partner. It seems that relationship has been a stabilising influence upon you. Prior to that relationship, you had a significant difficulty with alcohol. You had been an alcoholic since about the age of 17 years. Your record of prior convictions discloses nine convictions for drink driving offences. This speaks to the level of your alcoholism. I also note that in respect to the matter of maintaining a sexual relationship for which you were sentenced, the Comments on Passing Sentence indicate that you were an alcoholic when that crime occurred and that it "in some way may have been a contributing cause of his behaviour". The evidence of the complainant and other witnesses in this trial, including your daughter, clearly indicates that when this crime occurred, you were also consuming alcohol to excess on an almost daily basis. You had a difficulty with gambling around the time this crime occurred also. Since you commenced your relationship with your current partner, you have ceased gambling, and I am told that you now only consume alcohol in moderation.

You are in poor health. You suffer from emphysema, angina, asthma and a heart condition. In March 2024, you underwent a right hip replacement and it appears likely that your left hip will also need replacing in the near future. In March 2024 you also had your prostate removed. The biopsy results do not suggest cancer, but there appear to be some ongoing complications that may necessitate further exploration and treatment. I note you also act as a carer for your

partner. She suffers from peripheral neuropathy. This is a disease which involves muscle wasting. She is unable to live independently. She is reliant on a wheelchair as her mobility is significantly impaired. She cannot undertake many daily tasks, such as cooking for herself, and she has no feelings in her fingertips. I have read and considered a letter provided by your partner in which she, rather subjectively in my view, suggests that she will not be able to cope if you are imprisoned.

The law in respect to the relevance of hardship to family members has traditionally required exceptional circumstances to be established before it is taken into account. There is, however, a more recent line of authority which suggests there has been a limited amelioration of this strict requirement and a more suitable approach is to consider serious or extreme hardship as part of the "instinctive synthesis" that a sentencing court embarks upon in any sentencing exercise. I intend to adopt this approach and will take the hardship caused to your partner into account as a relevant consideration, but in my view, it is far from determinative. It is one of the many, often conflicting, factors that a sentencing court must take into account. The overriding consideration remains that the sentence imposed must remain commensurate with the objective gravity of the crime.

I intend to proceed on the assumption that your partner will, in time, be able to access appropriate support within the community. Whilst I appreciate that such services can be scant, such services do exist within our community. Whilst it might result in a less familiar or comfortable form of care than she currently receives from you, I proceed on the basis that it is reasonable to infer that she will not be left entirely without assistance. In any event, the medical condition of your partner and indeed your own medical condition, are but one of the many factors for this Court to balance, and whilst they may appropriately moderate the sentence I intend to impose, they cannot result in an unduly lenient sentence that does not meet all relevant sentencing principles.

I accept that because of your health conditions, imprisonment is going to be a more difficult experience for you. Again, I must proceed on the assumption that you will receive essential care, treatment and medication whilst serving the prison sentence, although I think it is reasonable to infer that it may well not be at the same level as you would receive if you were in the community. It is also relevant to consider that with the passage of time, your health conditions may deteriorate further, thereby exacerbating the difficulties associated with imprisonment.

Whilst the state of health of any defendant is always relevant to the consideration of an appropriate sentence, the fundamental premise is that ill health cannot be allowed to become a license to commit crime, nor can defendants generally expect to escape punishment because of the condition of their health. This crime occurred decades ago. At any point you could have chosen to accept responsibility for how you behaved. You were interviewed by police on 27 February 2019. At that point you denied the allegations and indeed denied even knowing the complainant. You showed no remorse for your conduct then, nor since. Your current predicament is then, in my assessment, largely of your own making. It is important that not only you, but other prospective offenders, understand that the passing of decades does not mean a heavy and just sentence will be avoided. There should not be a discernible benefit flowing from the silencing of victims of child abuse.

RDA on any view, this was a most serious crime. I accept it was a single incident, and you desisted in your conduct, but your conduct was not fleeting, and it involved a notable breach

of trust given the complainant was present in your home and under your care and supervision. I also do not consider that your crime can appropriately be categorised as opportunistic. You had groomed her making her susceptible to your predatory act. Her young age and her family circumstances made her particularly vulnerable. The harm you have caused her has been life changing. In simple terms, you took her innocence from her.

To serve the sentencing aims of punishment, vindication of the victim, the protection of children generally, denunciation and deterrence, a period of imprisonment must be imposed. Given the state of your health, I intend to moderate it and I will provide for the possibility of release on parole at the earliest time permitted by law.

RDA, you are convicted. 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 ten years from your release. You are sentenced to imprisonment for a period of 21 months. I order that you are not eligible to apply for parole until you have served one-half of that sentence.