

Christopher Wright, the defendant, has pleaded guilty to one count of possession of child exploitation material. The particulars alleged are that on or about 5 March 2024, he possessed such material, namely 134 images and 78 videos kept on a mobile phone and an iPad. As at 4 March 2024, the defendant was, and still is, the subject of an order under the *Community Protection (Offender Reporting) Act 2005*. This followed his conviction on 12 February 2014 of two counts of an indecent act with a young person, and one count of indecent assault. He was dealt with in this Court and sentenced to two years' imprisonment, with an order that his name being be placed on the register and that he comply with the reporting obligations for 15 years following his release. After serving the non-parole period of 20 months he was released on parole for six months and successfully negotiated that period. Being a registered offender, the defendant was subject to regular compliance checks by police. On 5 March 2024, officers went to his home for the purposes of conducting a routine compliance check. The defendant voluntarily produced a mobile phone and an iPad, along with five USB devices and a hard drive. He was asked if he had any other storage devices, and he said he did not. However, in a search of the defendant's bedroom, the police located a second iPad hidden under the bed. When asked if there was anything on there which should not be, he immediately confessed. He was arrested, cautioned and spoken to whilst still at his home. The defendant made full admissions. He said he was responsible for putting the material on the iPad, that the images had been saved to that device over the last six months, and that he had downloaded them from a photo sharing website. He had been sent the video files by email.

When the mobile phone and the iPad were examined, the mobile phone was found to contain one video depicting what is usually described as category 1 material, being depictions of a real pre-pubescent child, where the child is involved in a sexual act, involved in, or witnessing, a sexual act, or the material is focused on the child's anal or genital region. The iPad was found to contain 8,484 images and videos, only an unspecified portion of which was examined. Of the images and videos which were examined, the iPad was found to contain 134 unique images and 77 unique videos. Those images and videos included male and female children in sexual poses, children engaging in sexual acts together, and adults engaging in sexual acts, including penetrative acts, with children. The State's case is that, as matter of context, the amount of material specified in the indictment is a representative sample of the whole of the material, and that most of the material was not dissimilar in nature. This was not disputed.

The defendant is now 44 years old. In addition to the set of prior convictions already mentioned, he has additional relevant convictions going back to 2011. On 21 December of that year, he was sentenced on three counts of an indecent act with a young person under 17, three counts of indecent assault, six charges of production of child exploitation material, one of possession, and on a Commonwealth indictment two charges of using a carriage service to access child pornography material and one of using a carriage service to transmit such material. In total, he was sentenced to two years' imprisonment, with effective parole after serving one-half with a registration order was made under the *Community Protection (Offender Reporting) Act* to operate for six years upon release. Plainly enough, given that background of offending, the present matters strongly suggest, not only the usual heavily predominant factors of general deterrence and denunciation, but also the need for specific deterrence. However, having heard from the defendant's counsel and having read a report of Dr O'Donnell, forensic psychologist, I was persuaded to obtain a home detention assessment report. First, I was told of the following

matters. He lives at home with his mother, an aunt, and a cousin. All remain supportive of him. It has emerged that the defendant was sexually abused as a young child by two different people, over what seems to be an appreciable period. He completed formal education to Grade 12 but was bullied a lot during his school years and after leaving, led a relative reclusive life. He has had several jobs throughout his adult life. When he was released from his last sentence – which was mid-2015 – he was subject to his parole obligations, part of which were to engage with formal counselling, which he did for about six months and which he found very beneficial. Whilst in custody, he had actively engaged in counselling services available to prisoners. He continued with counselling until such time as he felt his situation was more stable. It was about nine years later that he embarked on current offending. This came about in the following way. He had employment at a meatworks, as a cleaner. This was of significance to him as he had difficulty getting work after twice having been imprisoned. Things at his workplace became quite uncomfortable and he started to feel unsafe. This culminated in a threat of violence in the work car park by two people wearing masks and disguises. He spoke to police and was told there was nothing that could be done. He was then told that his casual position would be suspended, and he effectively lost his job. This put him out of work with a genuine sense of having been let down by the authorities from whom he had sought assistance. I was told he became very depressed which, as it was put, "unfortunately caused all the work over the past decade into his rehabilitation to be thrown away in a short period." He became more reclusive out of fear and eventually he succumbed to accessing the relevant material which he did over about a six-month period. He accepts he has an addiction and needs constant formal assistance to ensure his behaviour is not repeated. Since being charged with these matters, he has, through his general practitioner, engaged on a mental health care plan which involves ongoing counselling.

Second, Dr O'Donnell's report reveals the defendant's acceptance of sexual attraction to male and female pre-pubescent and adolescent children. He views a broad range of pornography for sexual gratification. The defendant told Dr O'Donnell that he did not feel that going back to prison was going to help him in the slightest; the only thing that has been helpful is counselling. I do not take that as a form of self-serving manipulation, but simply a statement of fact. The defendant reported ongoing problems with depression and anxiety all his life, and he has experienced suicidal ideation. He currently feels that he has let people down and his sleep is disrupted. In Dr O'Donnell's view, the defendant presents with both a major depressive disorder and a paedophilic disorder, and his attraction to children cannot be "cured" but can be managed with behavioural control. Dr O'Donnell confirms that he relapsed into accessing child exploitation material after his mental health state deteriorated to major depression. That depressive state contributed causally to his re-offending. To quote Dr O'Donnell, "He felt terrible about himself, and ashamed of relapsing, and engaging in this behaviour, in social isolation, having been publicly shamed in his workplace for his past sexual offending behaviour." As I understand it, the State do not dispute the causal connection between this major depression and his reoffending but say it should be given little weight. The defendant reported that one-to-one counselling with a male practitioner in the community has been the most helpful intervention that has resulted in him being able to resist offending. Lastly, Dr O'Donnell suggests that this depressive illness be considered in terms of reduced moral culpability and, although ultimately it is a matter for the court of course, she recommends a therapeutic approach to the defendant's relapse. Of some significance in this is Dr O'Donnell's view that the defendant does not have an exclusive sexual interest in children, and he may be supported to develop sexual relationships with adult women. The home detention report reveals that the probation officer contacted the counsellor who the defendant consulted after being charged. Although now interstate, that person is happy to continue to work with him, as is a

complex high risk offender specialist with Community Corrections. The defendant told the probation officer that he felt that he was back to square one and acknowledged that he should have asked for help but could not push himself to do it. He reported that the threats at work "broke" him and his re-offending was his coping mechanism.

The evils of accessing and possessing child exploitation material have been stated many times. The production of such material involves the exploitation and abuse of children somewhere in the world. The damage done is often profound. Viewing and possession exacerbates and extends the abuse and exploitation. Access and possession tend to create a demand for its production. Collecting and viewing may have the effect of normalising the activity and desensitising all those involved in the whole process. As to this case, I was told that no-one had access to the devices, but I cannot say there was no risk of the material falling into the wrong hands; it seems to me that there is always some risk. As I have alluded to, it is well established that denunciation and general deterrence are the prominent factors in determining the appropriate sentence. In this case, there is no small quantity of material, but it is not, by any means, as great as often encountered by courts. The material was not paid for, nor does it seem to have been catalogued in any way. The defendant is not charged with distributing the material; there is no suggestion that he did so, and I accept that he had no intention to do so. It is in the defendant's favour, of course, that he has no record of offending since his release on parole in June 2015. Because of the regime to which the defendant is subject due to his registration, it may well be that the court can have greater confidence arising from that absence of recorded offending. I think it appropriate, in all of the circumstances, to accept the description of Dr O'Donnell that this was a relapse caused by major depression which was in turn caused by the unfortunate incident at his workplace. The defendant is also entitled to credit for his early plea of guilty. I was told he pleaded guilty on complaint in the Magistrates Court, but the indictment was filed to accommodate the forensic examination of the devices. The defendant has insight into his situation and I accept he is motivated to overcome his addiction.

After careful consideration of the submissions made by both parties and of the matter generally, I have come to the view that it can be properly resolved by way of home detention and a community correction order. Home detention can address multiple sentencing aims. Home detention is imprisonment. It is clearly less onerous than imprisonment in an institution, but it does have obvious punitive aspects. There is a significant encroachment on the offender's ordinary liberty and freedom of movement, and some of the conditions are very intrusive in relation to an offender's privacy. At the same time, it allows for therapeutic rehabilitative measures in the form of special conditions that can attach to the order. If the offender is not in employment, that restricts his or her scope for mobility and community interaction. I note that in this case the defendant is presently still unemployed. There is no doubt that possession of this sort of material needs to be strongly condemned but the circumstances of the individual case must be considered. Punishment and condemnation are of course required, but ultimately, the community's interests are well served by reformation and rehabilitation. I note that the defendant's activities with electronic devices can be closely monitored, as indeed shown by this charge, by virtue of ss 17 and 45B of the *Community Protection Offender Reporting Act*.

Mr Wright, I have set out the facts of the case and the relevant features and considerations to be taken into account. Ordinarily, but not exclusively as I see it, this crime results in a period of imprisonment, in gaol, when the offender has relevant prior convictions. You are not to be sentenced for your record. Your history means that you have lost some things that attract leniency, and trying to deter you has added importance. In your case, having regard to all the

circumstances and the material and information I have, I am satisfied that an alternative course is appropriate, although it will still involve severe restrictions on your freedom in the form of a home detention order, with as recommended, supervision. You are convicted of the crime. Subject to your consent, I make a home detention order. The maximum period a court is permitted to impose is 18 months. The period I direct to be the operational period is 15 months. The statutory core conditions of that order are contained in s 42AD(1) of the *Sentencing Act*, and they will include electronic monitoring under par (g), and accordingly subss (1)(h) and (5) apply. All conditions will be set out in writing for you. For subs (1)(b), I specify the home detention premises as [address]. As a condition of the order, you must attend Community Corrections at 111 Cameron Street Launceston by 10.00am tomorrow for induction. Further special conditions are as follows and apply to the operational period of the order.

- 1 You must remain at the home detention premises at all times except for the reasons set out in s 42AD(4);
- 2 In addition to the core conditions relating to electronic monitoring, compliance with reasonable and lawful directions as to that monitoring extends to the installation attachment or operation of a device, or a system, used for the purposes of electronic monitoring by a police officer, a probation officer, prescribed officer, or another person whose functions involve the installation or operation of a device or system used for the purposes of electronic monitoring.
- 3 You must not:
 - (a) take any controlled drugs or substances within the meaning of the *Misuse of Drugs Act 2001*;
 - (b) any medication containing an opiate, benzodiazepine, bupropion or pseudoephedrine without such medication having been prescribed or recommended in writing by a pharmacist, and you must on request provide written evidence of such prescription or recommendation;
- 4 You must submit to the supervision of a probation officer;
- 5 You must undertake or attend educational and other programs as directed by a probation officer including the any counselling or treatment program;
- 6 You must submit to medical psychological psychiatric assessment or treatment as directed by a probation officer;
- 7 You must maintain in operating condition an active mobile phone service, provide the details of that to a probation officer or prescribed officer, and be always accessible for phone contact.

[The defendant then consented to the making of the order.] I make the home detention order in those terms. As is also recommended, I make a community correction order. I have largely, if not completely dealt with the appropriate conditions within the framework of the home detention order, but for the sake of completeness I impose a condition that for that same period you are under the supervision of a probation officer. Even though you are already on the register, I am required to consider a further order under the *Community Protection Offender Reporting Act* unless I am satisfied that you do not pose a risk of similar offending. In the

circumstances I cannot be so satisfied. I do not see a power to direct reporting obligations to start at a future date, and accordingly, the order under that Act is for registration and reporting for a period of 21 years from today. Lastly, I order that the mobile phone and iPad seized by police be forfeited to the State.