

STATE OF TASMANIA v DAVID JAMES HARVEY
COMMENTS ON PASSING SENTENCE

11 DECEMBER 2024
MARTIN AJ

Mr Harvey, you have pleaded guilty to two crimes of using a carriage service for child abuse material and one crime of possessing child abuse material obtained or accessed using a carriage service. The first offence was committed on about 11 May 2020, the second between 8 July 2020 and 24 September 2022 and the third on about 3 March 2023. You are convicted of those crimes.

On 25 November 2021, police executed a search warrant at the home address of Mr Christopher Farrell. Following the search, Mr Farrell was arrested for crimes relating to the possession and distribution of child abuse material.

On 3 March 2023, police executed a search warrant at your home. Mr Farrell was at your home and again found to be in possession of child abuse material. His bail was revoked. On 1 May 2024, for ten counts of using a carriage service for child abuse material, possessing a bestiality product, and a number of other child abuse material offences having been taken into account, Mr Farrell was sentenced to a total of 7 years' imprisonment, not to be eligible for parole until he has served 4 years of that sentence.

During the search, police located and took possession of your mobile telephone. As a consequence, exchanges of messages and images were located. In order to fully understand the nature and extent of your offending, I set out the Crown facts, the accuracy of which you have agreed. As a background, child abuse material is classified by categories. Category 1 is referred to as a baseline, depicting a real prepubescent child (under the age of approximately 13 years) and the child is involved in a sexual act, is witnessing a sexual act or the material is focused/concentrated on the child's anal or genital region. Category 2 concerns other illegal files, being files that are illegal according to local legislation either by way of age or content.

The first charge of using a carriage service to solicit, transmit and cause transmission of child abuse material involved you using an application known as Telegram to communicate with other people and exchange child abuse material. Between 11 May 2020 and 23 May 2020 you engaged in a conversation, that is, you exchanged communications, with an individual user identified by a profile ending in 422. I have been told that is a person named Keiran.

On 11 May 2020 the exchange began with you saying "Heya sir" and "Is this the right telegram?" Keiran responded, "Hello" and "This is it." You replied, "Yay."

Kieran then sent a video of an adult male anally penetrating a prepubescent child. This video is in category 2 child abuse material. You responded, "Omg (meaning Oh my God). Yum", "That is so hot" and "I'll have to send you some \$." Keiran responded with a request for you to make more frequent payments "... or make it once a month, larger payments." In the same exchange, you advised Keiran that you had just transferred "more PayPal", being money, and would transfer more on Wednesday.

You sent the other user an image of a prepubescent penis, which is category 2 child abuse material. You sent three messages: "boy cock for you sir", "trying to get him for you sir" and "16yr." The exchange continued to be sexually explicit. You wrote to Keiran saying, "Bring some young porn when you visit".

Those are the essential facts relating to the first count.

What is described as Count 4 - Using a carriage service to transmit child abuse material, involved an exchange with a person known as Zach Morgan.

You had an exchange with Zach Morgan in December 2017 using the phone's native messaging platform. These conversations were generally sexualised. You discussed meeting up and the possibility of you lending him some money. There was a break in the exchanges until July 2020.

On 8 July 2020 you were exchanging messages with "Zach" you mentioned that you were with another man. You wrote, "We aren't fucking yet. Watching young porn." Zach replied "Ah. Cool. Sounds hot."

You sent a photograph of an Apple device displaying an image of a pubescent boy performing fellatio. This is category 2 child abuse material. Zach replied, "I wish I was there" and then you said, "Hot boy porn and big uncut cock." They were the exchanges with Zach and this count includes exchanges with a person who was identified as "Dirty Perv", being Farrell. You had exchanges on Telegram.

The particular exchange began in the early hours of 14 October 2020. You suggested that you and he watch some "kinky porn" together. When you were asked what you were interested in, you replied, "young". When asked for specifics, you stated that you enjoyed 10-12 year olds but that "[...] sometimes 5 or 6 can be way too hot."

In the exchange you stated that you wanted to watch boys being raped. These written statements are child abuse material. Those exchanges do not sit well with your evidence that you began a sexual relationship with Farrell at the end of 2019. In those exchanges, Farrell was asking what you were interested in. Presumably, he would have known that by October 2020 if you had been in a sexual relationship since the end of 2019. Ultimately the difference is not significant.

At 2.04am on 14 October 2020, you sent Farrell a video depicting an adult male anally penetrating a pubescent boy. This video is classified as category 2 child abuse material.

Shortly after, you asked in the exchange if Farrell had any "taboo porn" and when he replied that he did not, you offered to supply some.

On 16 October 2020 you sent Farrell a message, saying you wished you could share a young boy with him.

On 27 October 2020 you and Farrell were exchanging messages. Farrell indicated he was watching pornography. You asked what kind and he stated it was "man and boy". You sent a message saying, "Hopefully young."

This count also includes an exchange with a person in South Africa, who you referred to as Draven, he went with the title "Dv8rboy"

In June 2021 and July 2021, you and Draven exchanged sexualised messages. You said you were seeing a new man. You sent a message saying that the new man made you watch very young porn while he was fucking you. You said in the exchange "It was so hot". In the

exchange you also said that the new man was interested in 7-8 year olds. You stated the new man had extensive child abuse material and you would copy some to send to Draven.

You sent a video depicting an approximately 8 year old boy being anally penetrated by an adult. That video is category 1 child abuse material.

The Crown facts also state that on 24 September 2022 you sent to Farrell an image of a boy in his mid-teens with his shirt pulled up to expose his abdominals and his shorts pulled down to expose his erect penis. This is category 2 child abuse material.

On 27 April 2023 you were arrested and interviewed. You told police you knew what child abuse material was and you admitted having such material. In relation to the conversation on Telegram with Kieran, you told police you knew that he had an interest in underage boys and admitted sending child abuse material, requesting such material and receiving it. You said you participated in the conversation, that is the exchange, as you knew it excited people. You said you received child abuse material and accepted that you had "committed a crime" and that what you did was wrong. To the police you said you viewed the material to "see whether it was a young person or not".

As to the exchange with "Zak Morgan", you admitted to sending the material, as you did in connection with "Dv8rboy", who you have identified as Farrell, you said:

- you were guilty and would have to wear the charges for that
- you also admitted sending Farrell child abuse material; and
- in the interview you said you met Farrell in early 2020 and your relationship ended in August 2022.

That is a very brief summary of your interview.

As to matters personal to you, prior to your involvement with child abuse material, you had not previously offended against the law. You were held in high regard by your friends and associates.

Born in 1968, you were raised in Launceston and remained close to your mother until her death. However, you were not close to your father who was unable to accept your sexual orientation and pursuit of music rather than a more conventional career. Your counsel informed me that later, when you were residing elsewhere, from time to time you would go home and your father would move out to a hotel.

Your parents eventually divorced in 1999 and your relationship and contact with your father became even more tenuous. Your mother was understanding of your sexual orientation, but when she remarried to a person you describe as a misogynist, there were limitations placed on your relationship with your mother, at least for a period in the early 2000's.

You excelled at school, but were the subject to some bullying for reasons of your academic prowess. From your perspective, you flourished socially within the environs of the University of Tasmania where you completed two degrees in music before obtaining a graduate certificate in librarianship at TAFE. After completing your education, you spent over 20 years working as a librarian at the University of Tasmania campus in Hobart. In 2013 you became the music librarian for the Tasmanian Symphony Orchestra and you were also involved in working for a publishing house. Until at least now, you have been the classics promotions manager for the Australasian section of an international music group, where you currently find strong support.

I have been provided with three references from persons who are aware of your offending. The referees have seen the reports, or parts of the report, of a forensic psychiatrist, dated 11 September 2024, the same helpful report which has been provided to me. The referees speak very highly of you and of your prior good character. They speak of your care for others and your professionalism and help to others. They speak of your remorse and fragile emotional state. As one of the referees, who has known you for over 30 years wrote, the charges are something the referee finds very hard to understand as they seem "just to far removed from the character of the person I have known for a long time".

Mr Harvey, I have no doubt that prior to the commencement of your offending you made significant and generous contributions to the lives of others with whom you worked and associated, and you demonstrated good qualities, particularly in caring for your mother when she required palliative care. However, unfortunately, all too often the types of crimes which you committed are committed by persons of prior good character who have never previously been in trouble with the law. The serious nature of your prolonged criminal conduct means that your absence of prior offending, good quality and contributions can only be given limited weight in mitigation. Your offending stands in sharp contrast to a single momentary offence committed on impulse by a person of prior good character.

The psychiatrist observed that your history has "highlighted themes of chronic low self-esteem intertwined with a propensity to define [yourself], often negatively, by how others view [you]". In the psychiatrist's opinion, the level of self criticism stems from your difficult relationship with your father and has left you with a tendency to appease others at your own expense.

The psychiatrist has opined that your personality structure is best seen through the paradigm of an "avoidant personality disorder". The report continued:

"Such individuals show a pervasive pattern of inadequacy and hypersensitivity to negative evaluation with him showing a propensity for preoccupation with being criticised or rejected in social situations and viewing himself as socially inept and personally unappealing".

I have seen the video recorded interview police conducted with you, and that opinion offered by the psychiatrist appears to me to have been reflected in your police interview. I continue with the quote from the psychiatrist:

"Such individuals show a propensity to become potentially submissive and dependent on interpersonal relationships as a way of maintaining such relationships through fear of bringing about the termination of the relationship through the effects of their own inferiority".

I will come back to this question but that opinion is, in effect, at the heart of your counsel's submissions to me and your evidence concerning your offending.

The psychiatrist noted that by the early 2010's, you were increasingly pronged to loneliness and had not been in a relationship for a number of years.

In this context, you spoke about allowing people to send you material when you should have said no and deleted it. You spoke emotionally about not being a sexually exciting person and

said that if you pay for sex someone has to get something out of it. You spoke about being old and hideous and if someone gets excited maybe they will pick you. These statements were not related to Farrell being interested in you or you maintaining his interest.

There were other examples, and I have already mentioned the example of 14 October 2020, which does not sit well with the evidence you gave that you were in a sexual relationship from the end of 2019. In addition, you described the South African man as awful. However, when the South African said he preferred 16 year olds because it was legal, you responded that you prefer 15 year olds. They are just examples.

I am satisfied that although some of your offending was in an effort to please Farrell, you were also independent of Farrell, seeking to attract and excite other men for your personal gratification.

In addition, while you now acknowledge that your conduct was depraved and abhorrent, remanence persist of an attitude that somehow the seriousness of your offending is not as grave as other crimes of this type because of your dependent personality and the influence of Farrell. As a consequence of which, to use your words, you just did not think. In fact, notwithstanding the relatively small number of images, including only a single video, your offending is not at the lowest end of the scale of seriousness.

Let it be clearly understood that by your communications and conduct, you encouraged Farrell and others in their child abuse activities and interests. You actively encouraged their depraved pursuits and abuse, and you did so ultimately for your own selfish gratification, either through personal interest in the other male persons or to please Farrell. Yours was not merely passive exchanges. Your active encouragement of others is an aggravating feature of your offending. Further, the nature of your encouragement was not just through exchanging material, it was through the statements that you made too, which I have referred.

It is readily apparent that the criminal activity took place over a significant period and it involved both category one and two level images. In repeated statements, using highly expressive terms, you strongly encouraged others in their pursuits and use of material depicting grave sexual abuse of young children. Notwithstanding the relatively small number of images in comparison with other cases, your offending is well removed from the lower end of the scale of seriousness for crimes of this type.

I accept that your psychological state contributed to your offending and imprisonment will have an adverse affect on your health. However, these considerations must give way to the primacy of general deterrence and denunciation, as must another factor, such as extra curial punishment through both financial losses and loss of reputation. I note and accept the conclusions of the psychiatrist that your mental health conditions did not reduce your moral culpability and there is no basis for moderating the impact of general deterrence.

Crimes of the type that you committed are fare to common and their prevalence is increasing. They are abhorrent crimes. These crimes are not victimless. They are crimes against children. Ultimately, they involve the exploitation and sexual abuse of children, often from impoverished and particularly vulnerable circumstances. They do so by creating a demand for the production of such abusive material. The community is greatly disturbed by this type of offending, which as I said, is far too common and difficult to detect or prevent. The community expects the courts to reflect the communities' abhorrence and denunciation and to endeavour to protect

children by imposing penalties that, hopefully, will deter others who are minded to engage in this type of criminal activity.

As to your prospects for the future, you are ashamed of your conduct and through your plea, you have accepted responsibility for it. Counselling has been of assistance to you. I am satisfied that you have reasonably good prospects for rehabilitation, but I am not satisfied that you do not pose a risk of committing a reportable offence in the future. Your long standing psychological conditions render you vulnerable to coercion and relapse. I order that your name be placed on the register and that you comply with the conditions set out in the *Community Protection (Offender Reporting) Act 2005* for a period of five years from the date of your release.

I am satisfied that the only appropriate sentence is one of imprisonment. Your counsel has urged that I should order your immediate release because, as counsel put it, there is a combination of factors which result in the existence of exceptional circumstances. This question does not relate to the offending in May 2020 which occurred before the amendment to the relevant legislation. I accept that while individual circumstances which, considered individually, would not amount to exceptional circumstances, can potentially, in combination, result in the existence of exceptional circumstances, but it should not be overlooked that exceptional is a significant hurdle. It was deliberately put in place by Parliament. It means not normal, not average and not common. A combination of circumstances must result in the circumstances being out of the ordinary course, or unusual, or special, or uncommon. These are all expressions that have been used in previous authorities. There cannot be circumstances which are regularly, or routinely, or normally encountered. Those words also apply to the combination of individual circumstances.

I have considered the circumstances both individually and in their cumulative effect. Far from being satisfied that exceptional circumstances exist, I am satisfied that no such circumstances exist. I will impose a single sentence.

Had it not been for your plea of guilty, I would have imposed a sentence of imprisonment for three years and six months, commencing yesterday. After allowing for your plea, I impose a sentence of two years and nine months, commencing yesterday, but I will make a recognisance release order that you be released after serving one year and six months. The bond will be in the amount of \$2,000. It is a condition that you be of good behaviour for a period of two years from the date of your release, and that you not commit any offence punishable by imprisonment during that period.

As required by the legislation, as part of the recognisance release order, I direct that you be under the supervision of a probation officer for the period of two years from the date of your release. You must obey all reasonable directions of your probation officer. You must undertake such counselling, treatment and rehabilitation programs as your probation officer reasonably directs. You must not leave Tasmania during the period of the recognisance without the prior written permission of your probation officer. You must report to the Hobart Community Corrections Centre, 75 Liverpool Street within two clear working days of your release. You must report to and receive visits from a community corrections officer or officers, and you must notify an officer at the specified Community Corrections Centre of any change of address or employment within two clear working days after the change.