

KKW has pleaded guilty to three counts of penetrative sexual abuse of a young person.

At the time of offending, the defendant was aged 22–23 years of age. The complainant was born in 2005 and was aged 16 at the time.

At the time the complainant met the defendant, she was 15 years of age and had been disengaged from school and living independently for a number of years, both in and out of youth shelters. She was subject to a child protection order and had been since she was born.

Her background was deprived, and she was unprotected from negative influences. In recent years, she had been in abusive relationships, and at one point she had moved in with a partner who had introduced her to methamphetamine, a drug she went on to use intermittently.

In the latter half of 2021, the complainant returned to Hobart after living in Devonport for a period of time and commenced living with Ms B, an adult she had known since she was 11 or 12 years old. The complainant also knew Ms B's children.

It was while the complainant was living with Ms B that she received an unsolicited message from the defendant on Facebook. The complainant had no recollection of ever meeting him or hearing of him before but later received a "friend" request from him on Facebook, which she accepted.

They commenced exchanging messages, during which she told the defendant she was not in a good place because she had just moved down from Devonport. They started sharing information about their respective traumatic pasts.

Within a few days, the defendant visited the complainant for the first time. The complainant had invited him to come over and a drink with her and Ms B. It was apparent to the complainant that the defendant was older than her because he was able to drive and purchase alcohol.

Their friendship developed after that, and they commenced a sexual relationship. Initially, the complainant lied to the defendant and told him she was older than she was. Her Facebook profile showed she was 18 years of age.

Then, on 18 December 2021, a police officer went to the address and spoke with the complainant about whether she was in an unlawful sexual relationship with the defendant. She denied being in a relationship with the defendant, and the police officer gave her some advice about lawful ages for sexual relationships. Ms B spoke to the officer and told him that the two were not in a relationship.

Following the visit from the police officer, the complainant told the defendant her true age, which was 16. The defendant was upset but, after calming down, told her that it was fine but that they could not tell anyone they were in a relationship until her seventeenth birthday.

Later that same evening, the defendant and the complainant had vaginal intercourse in the complainant's bedroom after smoking cannabis. No condom was used, although the complainant had taken birth control measures. The complainant had turned 16 approximately three weeks before that occasion.

By this time, the defendant was staying overnight most of the time. He was sleeping in her bedroom, and they spent a lot of time in her bedroom watching Netflix and smoking ice or marijuana.

The second occasion of penetrative sexual intercourse occurred in the early hours of Christmas Eve or Christmas Day. Ms B's son was staying at his mother's home for Christmas. He woke early in the morning and saw the complainant and the defendant putting together a bike that had been bought for his younger brother. He had a shower and returned to check on their progress and saw the defendant having vaginal sexual intercourse with the complainant. He called out to the complainant, exclaiming in shock at what he had seen. A short while later, when the complainant and the defendant were dressed, he observed the complainant was heavily affected by drugs.

There was some tension between Ms B and the defendant, and the defendant decided he would not continue staying there and would move to his sister's house in Gagebrook. He told the complainant she could either come with him or not.

The complainant agreed and the couple moved into the garage at his sister's house in Gagebrook.

The relationship between the complainant and the defendant was mutually unhealthy. They often fought and spent much of their time together under the influence of illicit drugs, sometimes heavily so. This marked an unhappy time in the complainant's life, and she felt isolated from her family and friends.

Eventually, she resolved to leave the defendant and sought the assistance of her Youth Justice case worker.

On 12 April 2022, the defendant had vaginal sexual intercourse with the complainant. She is able to recall this date because the following day she decided she would leave the relationship. The defendant ejaculated inside the complainant and did not use a condom.

The following day, she left the defendant, as arranged with her Youth Justice worker, and that same day made a complaint to the police.

On 13 April 2022, the defendant was interviewed by police and admitted aspects of the relationship but not that they had had a sexual relationship.

He was charged and remanded in custody from 13 April 2022 until 2 May 2023 when he was admitted to bail. On 21 September 2023, he breached his bail by failing to appear and he has been in custody since then.

He has spent 781 days in custody. That is two years and almost two months.

I have been provided with a victim impact statement from the complainant. She was a young person who had many difficulties before her relationship with the defendant. It is obvious that the relationship with the defendant has adversely affected her emotional well-being and exacerbated her anxiety condition. She became withdrawn from family and other supports during the relationship. She has very little confidence and self-esteem, and the relationship did nothing to give her hope for better things in the future. For her, the preparation for the court process has been particularly stressful.

The defendant is aged 25 years. He has no prior convictions for crimes of a sexual nature. He has prior offences of assault on a female person in a relationship context and breaches of a police family violence order. In 2021, for such offences, he received a term of five months' imprisonment commencing 16 February 2021 and a concurrent sentence of 8 months' imprisonment, three months of which were suspended on condition that he not commit another offence for next two years. The three crimes before the court are breaches of that suspended sentence.

The defendant entered an early plea of guilty to the current indictment. At the time of offending, his own lifestyle was unstable. He was raised in difficult circumstances and a feature of home life was violence and drug-taking. He witnessed assaults against his mother. He was removed from the family home at an early age and placed in care for a period of approximately 6–12 months. This placement was abusive, and a traumatic period for him, and he ran away to return to his family. He is seeking redress in relation to his time in government care.

He has had periods of employment mainly in manual labour, namely scaffolding and building work, and plans to seek employment on his release from custody. I note he has been employed in the prison laundry while in custody.

He has a close bond with his family. I note he is very close to his mother, one of his sisters, and an aunt, who provide him with significant support. The defendant was staying with his parents while on bail. His mother is unwell and suffers from a mental health condition and he was providing her with assistance. The defendant has a son who is eight years of age. He has found being remanded in custody very difficult because of the separation from his family and his son.

In the period of the last two months, he was informed that his older sister who is only 29 years of age has been diagnosed with cancer, and that has been a shock for him and added to the difficulties he has experienced in being separated from his family.

The defendant is not a sophisticated person and, in light of information in the report from Community Corrections, it is apparent that there is a level of naivety and immaturity in his outlook on life and pursuits. The defendant plans to return to his parents' home once he is released.

He was introduced to drugs at an early age. He left school before finishing grade 8 and his literacy is limited.

Mr W, the report from Community Corrections notes that your offending does not appear to be linked to sexual deviance. I accept that you did not pursue the complainant because she was underage. When your relationship started, you genuinely believed she was 18. However, you were well aware of her true age at the time of the first specific occasion of sexual intercourse and continued a sexual relationship knowing her true age. You were also aware of her traumatic past and that she was a vulnerable young person. You had a responsibility in these circumstances not to take advantage of her for your own sexual gratification.

You were also aware of the criminal nature of your sexual relationship and spoke to her about not disclosing that relationship to the authorities.

The reason for this law is to protect children and young persons. The law recognises that young people need protection from adults who may try and take advantage of them, and also from

their own poor and immature choices which may be made at a time when they lack emotional maturity and understanding to fully appreciate the consequences of their choices. They are too young and immature to understand that engaging in sexual relations can be detrimental and damaging to them.

Sentences for this crime must be effective as a general deterrent to others who may be tempted to act in this way and by deterring others protect young people.

The report from Community Corrections dated 8 October 2024 informs me that the period of time in custody has brought home to you the seriousness of your conduct, has been a salutary life lesson, and, I conclude, a strong personal deterrent. You have expressed what is regarded as genuine remorse for the impact of your behaviour on the complainant.

Recommendations are made in terms of conditions which would promote your rehabilitation. I note that not all of these conditions, such as referral to the Family Violence Offender Intervention Program, are responsive to the charges before the Court. However, I regard it as a positive factor in your favour that you have indicated you will comply with any recommendations made. It would seem that you are someone who wants to ensure that you have positive and respectful relationships with your partners in the future. Rehabilitation is, in this case, a significant factor.

I record convictions and I impose two years' imprisonment. I take into account the time you have been on remand. I backdate the sentence 18 months and suspend the balance (six months) from today for a period of two years on the following conditions. You must not commit an offence punishable by imprisonment for two years from the date of your release, and you must comply with the terms of the Community Correction Order that I now impose which will be in place for 18 months.

I impose a Community Correction Order which is to be in place for 18 months from today. You must not commit an offence punishable by imprisonment for that period. That Community Correction Order carries all of the statutory core conditions. You must report to a probation officer at Community Corrections at 75 Liverpool Street, Hobart, within two working days of your release from custody and, subsequently, you must report as required. You must give notice to your probation officer of any change of address or employment before, or within two working days after, the change. You must not leave or remain outside Tasmania without the permission of a probation officer.

In addition, I impose special conditions which will also be in place for the same period of 18 months from today. You must submit to the supervision of a probation officer as required. You must undergo assessment and treatment for drug dependency as directed by a probation officer. You must submit to medical, psychological, and psychiatric assessment or treatment as directed by a probation officer and submit to testing in relation to drug use as directed by a probation officer. You must comply with directions made in relation to educational or vocational courses. You must comply with directions relating to intervention programs to promote your rehabilitation and address your risk of reoffending.

I make an order under the *Community Protection (Offender Reporting) Act 2005* for a period of three years.