

Mr Donnelly, you have pleaded guilty to one count of possession of child exploitation material, contrary to s 130C of the *Criminal Code*, one count of accessing child exploitation material, contrary to s 130D of the *Criminal Code*, and one count of distribution of child exploitation material, contrary to s 130B(1) of the *Criminal Code*.

On 3 December 2020, police executed a search warrant at your home [address redacted] following a notification from the Joint Anti-Child Exploitation Team, which suggested there had been uploads of child exploitation material to an on-line messaging platform from a subscriber linked to your residence. You were present during the search. Police cautioned you and you all but immediately made admissions to police, advising them that you had child exploitation material stored on your phone. You also told police that you had received and sent the material via the application "Kik", which is a free instant messaging application that allows users to send messages, videos and images.

Police seized two mobile phones from you – a Samsung S20 and a Samsung S9. Additionally, a Dell laptop was seized. All devices were located in your bedroom. The devices were subject to forensic analysis. In total, 2,809 category 1, and two images and videos were identified across the two devices. You were interviewed. You told police that you used the application Kik to find groups that were interested in child exploitation material. You said the groups often contained 50-100 members. You advised police that you would send explicit pictures of minors in order to gain entry to the groups. You admitted that you had sent images and videos via the Kik application on around 20 occasions. You also said that you would regularly change your username on the application, presumably to avoid detection, and that you had used both mobile phones to access the application.

You told police that you accessed child exploitation material through the application "Omegle", which is a free on-line chat website, which allows for anonymous conversations between users. You told police that you would access the child exploitation material through this website and then use that material to get into groups on the Kik application. You also told police that you used a virtual private network in order to access a wider range of internet sites. You said you had to "get lucky" to find the right site, a reference to finding child exploitation material. You also admitted to downloading photographs from a site called "Secrethandful", which you described as being "full of paedophiles".

In relation to the material that was found on the mobile phones, you agreed that you had stored images in folders within the photo gallery on each phone. You agreed some of the images related to child exploitation material. You said, however, that you had not stored as much as people had sent you.

The material that was found on the two mobile phones was classified according to the Interpol Baseline Classifications system. The Samsung S20 mobile phone had 68 videos and 332 images of category 1 material. The nature of this material is that it depicts real pre-pubescent children under the age of 13 years, involved in a sexual act, witnessing a sexual act, or is material which is focused on the child's anal or genital region.

The Samsung S20 phone contained 51 videos and 497 images of category 2 material. The Samsung S9 mobile phone contained 976 files, both videos and images, which were of a category 1 nature, and 885 files, which were of a category 2 nature.

I do not intend to reiterate the detail of the examples of the material provided to me, but it is clear that a significant amount of the material was of a serious and depraved nature. The type of conduct depicted in the material included, but was not limited to:

- A video of a 10-12 year old female child, reclined on a bed with her wrists gaffer-taped to her ankles, thereby preventing her from straightening or closing her legs, with an adult male slapping, and then penetrating her vagina with his penis.
- A 6-10 year old female, lying naked on a bed whilst an adult performed oral sexual intercourse upon her.
- A video of a female child aged 8-12, being forcefully raped. The child is visibly distressed and is crying.
- Images of a child as young as 2-4 years, being anally raped by an adult male.

In some of the videos and images, the children are young. In others, the children are restrained and display distress and reactions consistent with them being in significant pain. Some of the videos in your possession were several minutes in length.

When you were interviewed by police, you told officers that you entered these chat rooms for the purpose of tracking down and exposing paedophiles. You claimed that you would take screen shots of usernames and then send the information to a Facebook group designed to expose paedophiles. Police investigated these claims. There is no evidence that you, in fact, did this. I sentence on the basis that this was not a truthful account, but rather was a contrived excuse designed to justify your appalling criminal conduct.

You are 27 years of age. You have no relevant recorded criminal history. You grew up in difficult circumstances. You were raised by your grandmother, alongside your aunts and uncles. Your biological mother experienced drug induced psychosis and was not in a position to care for you. You never really knew her, or had any form of significant relationship with her. Nor did you have any sort of relationship with your biological father. There is some suggestion that you were born to an incestuous relationship. For many years, you believed your grandmother was, in fact, your mother and your aunts and uncles were your siblings. Your grandmother suffered from mental health difficulties and the family home was quite chaotic. It was also a violent household. Your grandmother's partner was a volatile character and family violence was frequent. Your schooling was very difficult. You were subjected to incessant bullying during your primary school years. Consequently, you ceased attending school and completed your education on an on-line basis. Your teenage years were spent largely in isolation and your social skills are poor.

Whilst you have never been formally diagnosed, you self-report a number of symptoms consistent with autism, including social difficulties and sensory sensitivities. I have received a report from Dr Georgina O'Donnell. She notes that you grew up in a dysfunctional home environment, where you did not have a reliable role model for guidance in your sexual development. She also notes that you were socially isolated. She opines that you present with symptoms of post-traumatic stress and features of undiagnosed autism spectrum disorder. She notes the following:

*"I have formed the view that Mr Donnelly's dysfunctional family of origin background and associated trauma, in addition to his autistic features, contribute*

*causally to his possession and distribution of child exploitation materials. It is my opinion that growing up in a home where there was reportedly incest, mental illness, a lack of stable adult role models, and the social isolation of home schooling throughout critical psycho-social developmental periods, has contributed to Mr Donnelly developing the psycho-sexual problems reflected in his on-line behaviour."*

I accept that generally speaking, there is some nexus between your post-traumatic stress and likely autism and the offending, but I am not satisfied that that nexus is an overly strong one. There is no doubt that you knew that what you were doing was wrong, as evidenced by the false account you provided to police in explanation of your conduct. I sentence on the basis that at the time of the offending, your symptomology contributed in some undefined manner to the offending and to a limited extent lessens your moral culpability, but not in my assessment, to any significant degree. It certainly does not diminish the need for general deterrence to play a significant role in this sentencing exercise.

Indeed, in my view, the primary sentencing consideration in a case of this nature remains general deterrence. The collection and possession of child exploitation material creates a market which encourages, and provides a reason for, the production of such material. Its production inevitably results in the horrific abuse of children. Here, some of the material depicted a high level of depravity. Undoubtedly, there was significant harm caused to the children who were abused during the creation of this material. Moreover, you distributed some of this material and once distributed, you had no control over what the recipient may do with the material, or what response viewing the material may invoke within the recipient. The very nature of the internet is that you had no control over how far and wide the material may be further distributed. Your actions in sharing this material takes your culpability to a high level. Courts will not tolerate conduct of this nature. Those who possess and distribute such material must understand that the consequences of doing so will be harsh punishment. Crimes of this nature are necessarily premeditated. They are relatively easy to commit and they cause harm to the moral fabric of our communities.

I take into account your plea of guilty. It is of value in the formulation of sentence as it has saved members of our community, in the form of jurors, having to be confronted by this very distasteful material. I bear in mind the number of images and videos involved. Whilst I accept that number is not as significant as is often seen by the courts, it was far from a menial amount, and the content of many of the images and videos was disturbing. Moreover, as noted, on at least 20 occasions, you distributed such images and videos to others and thereby lost control over what happened to the material. Given the need for the sentence to emphasise general deterrence, the only appropriate sentencing outcome is a period of actual imprisonment. I will permit early release on parole having regard to all the factors which I have identified.

Joshua James Donnelly, you are convicted of all the crimes to which you have pleaded guilty. You are sentenced to imprisonment for a period of 15 months. That sentence will commence from 25 September 2025. Were it not for your plea of guilty, I would have imposed a sentence in the realm of eighteen months' imprisonment. I order that you are not eligible for parole until you have served one-half of the period of imprisonment.

I am required to make an order under the *Community Protection (Offender Reporting) Act 2005*, unless I am satisfied that you do not pose a risk of committing a reportable offence in the future. Having regard to the circumstances of this case, I am not so satisfied and

accordingly must make an order. I order that your name be placed on the register pursuant to that Act and that you comply with the reporting obligations under that Act for a period of five years following your release from custody. Pursuant to s 130F of the *Criminal Code*, I order that the two Samsung mobile phones be forfeited to the State of Tasmania.