

Alexei Matafonov, the defendant, has pleaded guilty to one count of persistent sexual abuse of a young person. The offending happened in a period between about January 2020 and January 2021. At the time, he was 26 to 27 years old. The young person was a female who I will call Hayley, then aged between 15 and 16 years old, the age difference being 11 years and one month. In early 2019, Hayley's family lived on a farm in northern Tasmania. Her parents were religious and conservative in nature. The defendant's family had also lived on a property in Northern Tasmania since about 2010 but in 2015 the defendant had gone back to Queensland whence they had come. He regularly travelled back to Tasmania to visit his family. In about February 2019 he stayed with Hayley's family and worked on their farm for a short period before returning to Queensland. This seems to be the first contact between the two people. About a year later he returned and, as briefly put in the Crown statement of facts, sexual intercourse took place for the first time. The relevant facts of the intervening period mostly came by way of material put in the plea in mitigation. The defendant's contact with Hayley's family was an older brother. In late October 2019, Hayley made contact with the defendant by way of social media, asking if he remembered her from the time he had stayed with them and fixed the car engine. The defendant says he had no memory of her, but he responded based on her being the family of his friend. Ongoing online conversation followed, infrequent at first. Over time, she told him about her life. He believed her then to be 15 years old. She told him that her parents were very religious and controlling, and that she experienced physical and sexual abuse, and neglect. She was banned from using a phone and the internet and was using her brother's phone to contact him. The defendant became very concerned about her welfare. He returned to Tasmania in the Christmas/New Year period of 2019/2020 to visit his family. Sometime in January he went to Hayley's home to check on her and to see for himself what may have been happening. He spoke to her and gave her a phone so that she could contact him. Further reports of abuse were confirmed by one of Hayley's younger brothers. It seems that at about this time, he contacted Child Safety Services to express a general level of concern. As to the further facts, the State has identified six occasions on which unlawful sexual acts took place. The following narrative surrounding those occasions on which I proceed is primarily constructed from material provided by the defendant as to which there is agreement or no dispute. The defendant made a second trip to Tasmania in February 2020. He went to Hayley's house having arranged for her to sneak out to meet him. At about 1 am she left, got into the defendant's vehicle and they drove to a short-term rental at a nearby town. They ate a meal, watched a movie and he drove her home. A few days later the process was repeated except they drove to a carpark. On the back seat of the vehicle, the defendant started to kiss Hayley, touched her body, took her clothes and underwear off, licked her vagina and having put a condom on, partially inserted his penis into her vagina. This was Hayley's first experience of sexual intercourse. She told him to stop as she was in pain. He did so. They dressed and drove home. This is *Occasion 1* when Hayley was about 15 ½ years old. At around this time, the defendant made a more specific complaint to the police about Hayley's treatment at home. She was taken from her family and put in alternative accommodation. When back in Queensland, the defendant was injured in a motor vehicle accident on 26 February 2020. Although injured, he came to Tasmania on 29 February and met Hayley in the period between then and 6 March. On that day he sought treatment in Hobart for his injuries and returned to Queensland the next day. *Occasion 2* was in that period. After being removed from home Hayley was staying in short-term rental accommodation with one of her brothers. The unlawful sexual act was vaginal sexual intercourse which took place in a bedroom. This was prolonged, with the defendant directing Hayley into different positions. Protection was used.

When the defendant arrived in Queensland on 7 March, he went to a hospital and was required to have emergency surgery. He was hospitalised for a few weeks after which he made the decision to return to Tasmania to be closer to his family because of his physical and mental health issues. This was in late April 2020 just after COVID border closures and he was in quarantine until 9 May 2020. Between then and the identified third occasion, Hayley was staying with a family in a separate unit outside the main house. The defendant often stayed overnight with her and the two had vaginal sexual intercourse. On two occasions he picked her up in his vehicle and they had sex in the car. In around July 2020 Hayley was effectively homeless in Launceston and moved to Hobart to live with the defendant in a house in Lutana. She stayed with him for about two to three months. *Occasion 3* is the first night she stayed at that house. They watched a movie in bed. Protected vaginal sexual intercourse took place. After the time in Lutana, the defendant then moved to a different house in Bellerive. Hayley moved in with him. While living at Bellerive, regular vaginal sexual intercourse took place, mostly every night or every other night. *Occasion 4* was during the time they were living in Bellerive, sometime between mid-September 2020 and mid-December 2020 and just after they had moved in. After cooking and eating their evening meal, they had a shower together went into the bedroom, and vaginal sexual intercourse took place after which they slept. In January 2021, the defendant moved from Bellerive to a house in Howrah. Hayley did not move with him but went to live with a brother. *Occasion 5* happened at this house. The defendant picked her up from where she was living and drove her to his house. They got into bed and unprotected vaginal sexual intercourse took place. *Occasion 6* also happened at the Howrah house. The defendant picked Hayley up, they went out for dinner, returned to his house and vaginal sexual intercourse took place. Sexual activity between the two ended in around January 2021. I note I have not been provided with a victim impact statement.

The defendant is now 32 years old and has no recorded history of offending to speak of. He is a single man with no dependents. His family is still in Tasmania. At least by October 2022 – when he was arrested on warrant and extradited – he had returned to Queensland and re-established himself there. He is currently employed in a mechanical workshop, having studied mechanical engineering. I have a letter of support from his employer who speaks highly of his warmth, care and consideration and genuine desire to be a part of the small community where they are, as well as of his trustworthiness. I have a report from Dr Jennifer Wright, psychologist, and the benefit of counsel's submissions. I accept that the defendant also has a fair degree of disruption and dysfunction in his background. He was born in Russia and is the oldest of ten children. His father moved to Australia when the defendant was three, and he stayed with mother until the age of six until they joined the father in Australia. His mother was an excessive physical disciplinarian, with the defendant on one occasion as a child being hospitalised with head injuries from one of her beatings. The family moved often and over long distances. Just before the defendant started grade 11 the family moved to Gympie in Queensland. He completed year 12 by distance education and then started a certificate course in automotive mechanics engineering. The family having then moved to far north Queensland, he started tertiary education in Brisbane. When he was in his late teens his parents purchased the rural property in northern Tasmania and the family moved there. He joined them and studied mechanical engineering in Launceston before moving to Hobart to continue his studies. When he was 22, he moved back to Queensland to take up work in the building industry. His mental health was poor because of the strict environment in which he was brought up, with all siblings being exposed to abuse. He being the eldest, he felt some responsibility. When he went back to Queensland, he was given medication and provided with counselling for a time. It was during this time that he travelled to and from Tasmania to visit his family, although his parents were

not particularly supportive of him due to their strict religious beliefs. When the defendant returned to Tasmania following his hospitalisation in March 2020, the plan was for him to take the house in Lutana and for Hayley to live with him but in the spare room. That did not eventuate. I am told that he felt a sense of responsibility for her safety generally and her mental health and he was torn between what he felt best for her and wanting to protect her, believing that if he were to withdraw his sexual attentions and affection this would result in a downturn in her mental health. I was told that he made many unsuccessful attempts to extricate himself from the situation. It was put that he was put in a complex mental state of his own in which he was not making good decisions. Counsel submitted that although he continued to have sexual contact with Hayley knowing it was not the right thing to do, he did his very best to support her. He was aware that she had not been vaccinated because of her parents' religious beliefs. They would simply pray for her whenever she was sick. He ensured she received those vaccinations and encouraged her to enrol in traditional schooling. He encouraged her to continue communications with her brothers. By about August 2020, he realised that she was quite unwell mentally and that he had put himself in a serious situation in terms of the nature of his relationship. I was told that if he suggested stopping the sexual aspect of the relationship, Hayley would become highly distressed and threaten suicide, something in respect of which he held a genuine and properly based concern. Ultimately it was a serious threat of suicide which prompted his call to police with concerns for her welfare that brought the end of them living together. The move to the house at Howrah signified a tapering off of the intensity of the relationship. It seems she demanded he continue to see her and help her, and threatened to report him to police. The general relationship deteriorated. He became despairing of the situation and in March 2021 made an attempt on his own life which resulted in admission to an in-patient mental health unit with a diagnosis of depression. Hayley made a statement to police in April 2021, followed by a second in March 2022, with formal action not being taken until six months later.

In her report, Dr Wright describes a history of childhood physical abuse and neglect from highly religious parents, with the defendant as the eldest child taking on a parenting role which had an impact on his social development. There is a reported diagnosis of ADHD at school, but he did not disclose this to his parents due to fear of their reaction. He received no treatment or support. He meets the criteria for a diagnosis of ADHD in adulthood. The symptoms are wide ranging and are associated with significant impairment in family and intimate relationships and self-confidence and self-esteem. He experienced his first episode of depression in his early 20's which resulted him in ceasing his studies and he did not return. His capacity to work has fluctuated over the years and, as Dr Wright put it, he has shown a transient pattern of movement between Tasmania and Queensland in his adulthood, returning to Tasmania to seek comfort from his family, and fleeing back to Queensland when he did not receive that desired comfort. Dr Wright says the motor vehicle accident in February 2020 has led to demonstrated symptoms of PTSD and dependency on prescription pain medication, and she notes it was around this period that he engaged in the relationship with Hayley. I will return to this point. Dr Wright identifies diagnoses of ADHD, major depressive disorder and substance abuse disorder. In Dr Wright's opinion, there were several factors contributing to the defendant's decision-making at the time, which included problems with executive functioning and consequential thinking associated with ADHD, his lack of care for himself or others associated with his depression, and feelings of hopelessness and his lack of inhibition as a result of opiate medication and alcohol. Dr Wright says the combined effect of these contributors impaired his ability to exercise appropriate judgment and contributed causally to the commission of the offence. Of course, these views tend to ignore the fact that there were two occasions of unlawful sexual activity before the accident. The defendant's counsel put, without

dissent, that his return to the State after the accident was not for the specific purpose of pursuing a relationship. That can be accepted but at the same time, the facts suggest more of a continuum than an end to things after the first two occasions, and a reignition of sexual interest after the accident. I think the appropriate way to deal with all of this is to accept that the ADHD and depression had some role to play in his decision to engage in and continue with sexual activity. That leads to a moderation of his moral culpability but not substantially so. Next, the application of the *Verdins* principles is uncertain where substance abuse is involved, and I will take into account that substance abuse as background context when looking at the continuation of the relationship after his return. No doubt the motor vehicle accident and its consequences exacerbated his depression. The defendant is now being treated for his depression and ADHD and is no longer taking pain medication nor drinking alcohol. The defendant says he has benefited from psychological assistance in addressing impulsivity, emotion regulation and depression. Dr Wright suggests specific deterrence should be approached with this in mind in that the defendant's mental health would be negatively impacted by a period of imprisonment; it would derail his treatment although it could she says, be supported while in custody. In this context, I note that the defendant has through counsel expressed to the Court that he seriously regrets his actions; he feels guilty and deeply sorry for the hurt that he has caused. He says he is no longer the person he was when he committed the offence and will never repeat it such a moral transgression again.

Mr Matafonov, as has been said many times, the purpose of the crime I am considering is not only to protect young people from exploitation by others, but to also in effect to protect them from themselves by dissuading them from sexual activity until they are thought to be emotionally mature enough to make sensible decisions about whether they have sex, and with whom. Engaging in premature sexual relations can have serious detrimental effects which may not emerge until much later. Leaving aside the first two occasions in February 2020, for the most part the sexual relationship was intense and lasted for about nine months. The age difference, while not as large as some cases, is still of significance. Hayley was a very vulnerable young person, having been in her family environment without the care and nurturing one might expect, and then in the State care system. It is likely she would have suffered mental health issues in any event, and that seems borne out by the facts, but the law presumes harm to have been caused by this type of crime in any event. Hayley's consent to sexual activity with you was informed by her vulnerability, her life circumstances and her still young age. The fact that she willingly participated in the relationship is of no significance. It must be said that there is something of a paradox in your protective intervention in her family life, knowing her difficult circumstances, while at the very same time quite willing to have sex with her at early stage when she was still at home, knowing her age. And knowing her background, you persisted with the sexual relationship. Although I am prepared to accept you saw risk in attempting to end things, the situation simply shows that things should not have reached that point to start with, and it reveals Hayley's struggles. In a real way you put yourself in a position of trust as far as she was concerned, and you abused that trust. There is a clear need for the sentence to be one that denounces this sort of conduct and attempts to deter others for doing likewise.

I take into account your personal circumstances as I have outlined them., including your longstanding mental health issues. Your family background is relevant, particularly because the harsh, religious upbringings the two of you had in common perhaps provide an explanation for your initial interest in Hayley and your desire to help her. You were arrested in September 2022 and, it is agreed, spent 10 days in custody before being bailed. You were then confined to living in this State until a bail variation in early December allowed you to return to Queensland. I take that into account. You are entitled to credit for your plea of guilty, which

was not entered at an early stage, but the authorities were made aware of the likely plea to the extent that Hayley did not have to be prepared for trial. I accept you have insight into your wrongdoing and are remorseful. However, I would be failing in my duty if I did not impose a relatively lengthy term of imprisonment, but there are aspects which justify the suspension of part of that term and I will allow the maximum parole eligibility. You are convicted of the crime and sentenced to two year's imprisonment to commence on 27 September 2025, six months of which is suspended on condition you commit no offence punishable by imprisonment for a period of 12 months. I order that you not be eligible for parole until you have served one half of the 18 month operative period of imprisonment. There remains the question of an order under the *Community Protection (Offender Reporting) Act*. I have given this matter careful consideration. You have taken steps to address your mental health issues and you now live in a supportive community. I note what you have said to the Court about your conduct through your counsel. I accept you have insight into your offending and regret what occurred. In all the circumstances, I am satisfied you now pose no real risk, and I decline to make an order.