

THE STATE OF TASMANIA v JPD
COMMENTS ON PASSING SENTENCE

10 NOVEMBER 2025
SHANAHAN CJ

JPD you have pleaded guilty to a single count of persistent sexual abuse of a young person between on or about 12 September 2010 and 31 December 2015 in that you maintained a sexual relationship with the complainant, a young person born on 12 September 2001, contrary to s 125A of the *Criminal Code*. These published comments have been prepared using a pseudonym to identify you in order to protect the identity of the complainant in compliance with s 194K of the *Evidence Act* 2001. The crime of persistent sexual abuse of a child is committed when a person commits an unlawful sexual act against a child on at least three separate occasions.

The particulars identify your offending on five occasions. They include oral sexual intercourse, two occasions of attempted penetration of the complainant's vagina, penetration of the complainant's vagina with your fingers, and attempted anal penetration.

You were born on 31 May 1995 and are currently 30 years old. At the outset of the period of persistent sexual abuse as pleaded, ie on or about 12 September 2010, you were aged 15. The complainant who was born on 12 September 2001 and is now 24 years old. At the beginning of the pleaded period she would have been exactly 9 years old. The pleaded period is from the complainant's ninth birthday to her fourteenth birthday. You and the complainant are half-brother and sister, you share the same biological mother.

In 2006, when the complainant was five years old and you were 10 or 11 years old, your mother passed away and you and the complainant went to live with your grandparents at an address in Bridgewater. Your grandparents had a regular social outing every second weekend.

Once you and the complainant were old enough, you were left at home during your grandparents' social outings, with you looking after the complainant. Between 2010 and 2015, when the complainant was aged nine to 14 years, and you were aged 15 to 20 years, you sexually abused the complainant on a regular basis.

The abuse started with your touching the complainant's breasts and vagina, underneath her clothing. You would comment on the complainant's developing breasts. You often bribed the complainant with rewards for sexual acts. Those rewards included, for example, treats which you did not have at home, or items, such as a new doona cover. Your offending occurred at your home in Bridgewater and during family camping trips to Lime Bay.

The abuse escalated when the complainant was around 13 or 14 years old and included penetration of the complainant's vagina with your fingers and attempted penetration of her vagina and anus with your penis.

There were also occasions when you photographed the complainant naked. The first time you photographed her, you asked her to lay on the floor on her back in between two recliner chairs. She was naked and you told her to 'open her legs' and you photographed her vagina.

There were multiple occasions when you penetrated the complainant's vagina with your fingers. You would touch her and sometimes tell her what you were going to do, before inserting your fingers into her vagina.

You usually inserted one finger first, and then when you inserted a second finger it caused the complainant pain. On more than one occasion you rubbed your penis on the outside of the complainant's vagina. You attempted, on more than one occasion, to insert your penis into her vagina, but it would not fit and caused her pain.

During a family camping trip to Lime Bay with your cousin, you took the complainant and your cousin to a rocky area at the beach. You masturbated in front of the complainant and your cousin until you ejaculated.

There were occasions in your bedroom where you would ask the complainant to stay in the room while you watched pornographic videos and masturbated. Sometimes, you would walk into her room naked expecting something to happen.

The complainant recalls a specific time when you came in naked, and she pretended to be asleep. On that occasion you did not say anything and ended up leaving. On two occasions when the complainant was aged 14 years, you made her perform oral sexual intercourse on you. The first time it happened the complainant felt pressured when you asked her to do it. You were in the lounge room, you were sitting on the couch, and the complainant was on her knees. You pushed her head down so she could not move away, and that is the incident described in the first particular.

When the complainant was 13 or 14 years old, you attempted to have vaginal sexual intercourse with her on more than one occasion. On one occasion, the complainant was laying on her back on the floor in the fireplace room, and you were on top of her. You were both naked. You attempted to penetrate the complainant's vagina with your penis but you were not successful, and that is particular 2. On an occasion during the offending period, you and the complainant were on the floor in the fireplace room, you inserted your fingers into her vagina, and that is particular 3.

On an occasion in your bedroom, you attempted to penetrate the complainant's vagina with your penis, and that is particular 4. And on an occasion during the offending period, you and complainant were on the floor in the fireplace room, when you attempted to insert your penis into her anus. This caused the complainant a lot of pain and caused your penis to bleed. That is particular 5. Your grandparents were home at the time, and assisted you with your injury, but they were unaware of what had caused it.

You participated in a video record of interview on 26 April 2024. Under caution you stated that after your mother passed away you were not in a good mental state. You accepted the complainant would have been around nine years old when your sexual abuse of her started. You coerced the complainant to do things for money or for favours. The touching occurred when your grandparents were out of the house, or during camping trips.

You said you were not 100 per cent – with what you were doing. You said you were exploring. You were at home with the complainant when the idea came into your head. You got the complainant to undress and stand naked in front of you. You touched her vagina and breasts, which, you stated, were developing. You said when you touched her vagina, it was mostly on the outside. There were few times you put anything inside her.

You said you tried to masturbate the complainant. When you touched her on the vagina, you were mostly trying to finger her, almost putting your fingers inside. This happened a few times but you could not say how many. You would get her to lay on the floor or the bed, and either ask her to masturbate herself or you would try yourself. You were mostly unclothed. When you rubbed your penis on her vagina, you were trying to pleasure yourself. You did this more than once, but you could not say how many times. You could not recall if you tried to put your penis inside the complainant's vagina. You agreed that the complainant would have a better memory of that.

You said that you are disgusted with yourself.

You did not disagree that when you tried to insert a second finger into the complainant's vagina, it would cause her pain. You could not recall the oral sexual intercourse but did not dispute it. You went on to state that you think you tried it, and the complainant said it was "yucky". You were around 16 years old at that time. You tried on another occasion, after having a shower, but the complainant still said it was "yucky".

You recall masturbating in front of the complainant. You would ask her to undress, offer a reward, and masturbate while sitting in a chair in the lounge room. You would ejaculate into your underwear or hands. You would look at the complainant while masturbating. You admitted photographing the complainant and later masturbating to it. You said you were not coping back then. You say you cope now by playing video games. You said that was not an option at the time. It was submitted by the State that playing video games was an option at the time, but your grandparents hated you playing video games.

During the camping trips to Lime Bay, you were curious about being bisexual. In relation to your cousin, you touched the complainant in front of him. You took the complainant to some rocks and touched her. You tried to insert your fingers into her vagina or masturbated. You can't recall where your cousin was at the time. This could have happened on one of four camping trips.

You made the complainant watch pornography once or twice so you could gauge her reaction to it. You think you stopped when the complainant was disinterested. Sometimes, while the porn was playing, you would masturbate with the complainant watching.

I heard the victim impact statement read.

The complainant stated that she experienced your sexual abuse over many years and that impacted every part of her life and shaped who she is today. She suffers from flashbacks which she describes as the most painful impact of your offending. She states that she was only five years old when her mum passed away and at that time she needed protection and love the most. The complainant says that during her most vulnerable years, you exploited her innocence, leaving her with fear, pain and deep trauma that continues to affect her to this day. Your actions left her feeling confused, worthless and profoundly alone. Even now, when she is stressed or reminded of the past, she says it's like she disappears into a fog. She feels disconnected from her surroundings, from her emotions and even from herself, as if she is watching life from behind a glass wall, and unable to fully engage or feel. The complainant cannot bring herself to visit her nan's house because too many rooms there are tied to her traumatic experiences.

The complainant describes her anxiety and how she has had, and continues, to live with the consequences of your offending. She struggled to concentrate throughout school, and now faces similar challenges at work. When working in a public facing role she was constantly terrified you might walk in. The fear she suffers is so consuming that she would become physically sick. She has missed time from work due to her anxiety. Her personal relationships have been affected. This has led to unhealthy eating habits as a way to shield herself to feel less vulnerable. She continues to carry a heavy burden of shame and discomfort in her own body.

The complainant hoped that telling her story would bring healing, but instead it has reopened wounds. She has started counselling and hopes she can heal enough to at feel safe in her own skin.

The State submits that the particularised occasions were not isolated acts, and that they formed part of an ongoing, extensive pattern of sexual abuse committed by you upon the complainant, which started when she was around 9 years old and continued until she was around 14.

It is said that your offending involved a breach of the complainant's trust in you as her half-sibling, and also a breach of trust that was held in you by your grandparents when you were left alone with the complainant as her carer.

Further, it is submitted that general deterrence, denunciation, condemnation and vindication are prominent sentencing considerations in these types of matters. There are no prior convictions, and there's no time in custody accrued.

In mitigation I was told that you are now aged 30 years of age and your life has been debilitated by the effects of depression, anxiety and post-traumatic stress disorder. Your counsel indicated that the cause of that depression, anxiety and PTSD was your mother's death when you were 12.

It was put that the first complaint of your behaviour was made by the complainant to your grandmother in or about 2019, at a time when the complainant must have been 17 or 18. I am told you first admitted or conceded your behaviour to your grandmother when your grandmother raised those concerns with you following the complainant's disclosure to her. It was put that as a consequence you then agreed to have no further contact with the family.

You have lived a reclusive life and withdrawn from life in general and social supports. You have limited support overall since moving out from your grandparent's home.

The single most impactful event in your early life was the death of your mother from leukaemia when you were 12. You watched your mother's health decline prior to her death for a period of around 4 years. It is put that your mother's death was the likely catalyst for your anxiety and depression, and explains, to some extent, your struggles at school.

Your parents separated when you were very young. You lived with your mother, and then with your grandparents. You struggled at school only scraping through academically and were described as being disengaged from learning. I am told that you were subjected to bullying, both at high school and through college.

You have completed certificates at TAFE in relation to Information Technology, in which you have an interest.

After school, you have had limited employment. That has included working in security, sorting mail for Australia Post, and working as a cleaner. I am told that your mental health issues and the early onset of arthritis have made employment for you a significant challenge. Your arthritis is early onset but it is not an autoimmune disease. Since 2019, you have been on a disability support pension.

In 2022, after reporting considerable difficulties in day-to-day life, you were referred by your general practitioner to a psychological clinic for a cognitive assessment. Apparently, you reported struggling with basic tasks, such as maintaining your home, your personal hygiene and your finances. I was told that testing revealed scores which indicated post-traumatic stress disorder, autism spectrum disorder and ADHD and, in particular, your cognitive functioning fell within the low to average range. It was recommended you would benefit from a support worker in the community and a psychologist.

It is said that you ceased your offending conduct of your own accord. It was submitted that you were 20 years of age, and the complainant was 14 when that occurred. It appears clear, however, as I have already noted that your disclosures regarding your conduct only emerged after your grandmother had engaged you in respect of the complainant's complaint to her. You ceased your offending before you moved out of your grandparents' address.

I was presented with the following chronology. In April 2024, the complainant made her official disclosure to police. In June 2024, you attended the police station voluntarily, after being advised police wanted to speak to you. You agreed to participate in an interview. You made full admissions at the outset and provided some detail as to the acts that have become the particulars of charges. You also said that after your mother died, you struggled for years, going into a dark place and being unwell, mentally.

You told police that "I punish myself every day for it. It's not who I am. I'm trying to make it right. I hate myself for it. I know it was wrong." There was some doubt as to when you acknowledged that your conduct was wrong, there appears no doubt that you are now aware of that and some of the consequences of it. You also said that you hoped your absence from the complainant's life would let her heal. In that regard I note the Victim Impact Statement to which I have referred.

Continuing with the chronology, you were charged on complaint with a number of charges in July 2024, and in September 2024 you had your first appearance in the Magistrates Court. I am told that you instructed your counsel to plead guilty, however there was no disclosure at that time, and, given that there was a mixture of alleged offending conduct from when you were a youth and as an adult an adjournment was sought, although it was indicated to the magistrate at that stage, it was going to be a plea.

It was submitted that in November 2024, you attended the Magistrate's Court and confirmed through your counsel that the matter would resolve by way of a plea of guilty and indicated there would be no need for a trial or a dispute. The magistrate raised concerns about the form of the complaint which created difficulties in entering a plea at that time.

A psychiatric opinion was sought from Dr Michael Jordan who has prepared a report dated 19 May 2025. Dr Jordan noted you suffer from chronic depression and anxiety. Dr Jordan's psychiatric opinion, albeit without a formal diagnosis, is that it's highly likely that you also suffer from autism spectrum disorder and ADHD. In the later regard I note your testing scores in respect of psychological cognitive assessment.

In Dr Jordan's opinion your depression and anxiety were present during your teenage years having been precipitated by the death of your mother. It was submitted that your mental health conditions were significantly affecting you when you started your offending against the complainant.

You had an admission to the Department of Psychiatric Medicine in 2018, when you presented with anxiety and suicidal ideation, and there were some recommendations made. I am told there was no follow up, or follow up was not continued by Community Mental Health Services. Your admission was at a time when your offending had ceased, some three years after it is pleaded that your offending had ceased (no later than 12 September 2015).

Unsurprisingly perhaps, Dr Jordan stated that you found it hard to explain why your criminal behaviour occurred, most but not all of which Dr Jordan noted, happened when you were under 18. Dr Jordan indicated that exploration of your thought processes revealed themes of poor self-esteem, guilt and shame, particularly in reference to the offending.

You have had limited experience of personal relationships. I am told you were subject to controlling behaviour from a past girlfriend. I am also told that at one stage you were considering transitioning to a female gender. You present to the Court with a troubled, multi-faceted and somewhat enigmatic psychological and psychiatric profile. The Court can only rely and act upon the material provided and is not necessarily in a position to reconcile contradictions or ambiguity in that material.

However, the question arises in this matter whether your culpability for your offending should be regarded as reduced because of a mental disorder or abnormality that you were suffering at the time? It is also to be considered whether your lack of insight into your offending up until the point that you made admissions to your grandmother was also affected by such disorders or abnormalities?

In this State, Courts have adopted the approach of the Victorian Supreme Court in *R v Verdins, Buckley and Vo* [2007] VSCA 102, 16 VR 269 ("*Verdins*"), as confirmed and explained in *Director of Public Prosecutions (Vic) v O'Neill* [2015] VSCA 325, 47 VR 395 ("*O'Neill*"). The Tasmanian Court of Criminal Appeal has referred to *O'Neill* with approval in *DPP (Acting) v CBF* (2016) 25 Tas R 395 as per Porter J at [38]-[39]. The manner in which impaired mental functioning is relevant to sentencing is set out in *Verdins* at 276, [32], where they are expressed as six principles.

It was submitted on your behalf that Dr Jordan's opinion evidence enlivened several of the principles in *Verdins*. Dr Jordan notes that "sibling sexual abuse is a complex area. Although the nature of ... [your] ... assaults and interactions with ...[your] ... sister would have been intuitively deviant, a considerable proportion of the offending occurred when ... [you] ... were a minor and still developing your own sexual awareness." Of course, you were also in a position of trust as your sister's carer from time to time and there was a significant age gap between you and her. Dr Jordan suggests that "there is evidence that ...[you] ... struggled to attract girls during ... [your] ... early teen years and at some level the offending against his half-sister at least started as opportunistic substitution."

Those observations whilst they might explain the mechanism of your offending at some level, are somewhat speculative and don't greatly assist in seeking to identify your moral culpability other than to give some sign posts as to how your offending may have begun.

Dr Jordan then, helpfully, directly engages the six *Verdins*' principles in paragraphs (a)–(f) at pages 6 and 7 of his report. In his view the first and third principles are not engaged. In respect of the first principle at paragraph (a), Dr Jordan states that despite his diagnosis as to your mental disorders and depression being most likely present through at least some of your offending, he does not consider that those disorders or depression reduce your moral culpability. In respect of the third principle at paragraph (c), Dr Jordan states that he finds it difficult to support any need for a reduction in general deterrence as a consideration in sentencing.

Dealing with the balance of the *Verdins* principles Dr Jordan states, in respect of the second principle at (b), whether your diagnosed disorders and depression may have a bearing on the kind of sentence that is imposed, that those conditions have been untreated for a number of years. He attributes that to financial constraints and to your inability to articulate to a therapist the nature of your offending. I would not use the term "historic" to describe your offending because it has a very real continuing impact on the complainant as expressed in the Victim Impact Statement. Whilst Dr Jordan expresses the view that "from a therapeutic approach it would be hoped" that you can remain in the community for treatment he acknowledges "the Court will have many considerations to weigh in terms of sentencing".

Turning then to the principle at (d), whether specific deterrence should be moderated or eliminated because of the severity of your symptoms and the effect of your diagnosed depression and disorders on your mental capacity either at the time of offending or at the date of sentence or both. Dr Jordan's links his observations as to your shame and your response to your offending to your depressive state. It is unclear to me how it is said that those conditions were so severe as to lessen the need for specific deterrence. I appreciate Dr Jordan's observations regarding his assessment of your risk of future offending but that is not the object of this *Verdins'* principle. Dr Jordan's conclusion is expressed in the negative, ie that you do not require more stringent sentencing measures than would an individual who possessed a different psychological and personality structure. That you have not sought to justify your offending also does not go this *Verdins'* principle, which engages the severity of your mental health issues and their impact upon you.

Arriving at the fifth and sixth *Verdins'* principles. First, in respect of the fifth, I note Dr Jordan's opinion that you are in a psychologically fragile state and require considerable treatment for your depression and disorders, and that imprisonment will weigh more heavily on you than it would on a person of normal health. Second, in respect of the sixth principle, Dr Jordan considers that imprisonment will have a significant adverse effect on you and your already compromised mental health presentation.

In the context of these opinions, I have to consider the manner in which this Court approaches sentencing for this type of offending. It was conceded by your counsel that the impact of these factors went primarily to the length of a term of imprisonment and, as I understood it, not the need for imprisonment itself. That concession was properly made.

In arriving at an appropriate sentence I take into account your progress, both in acknowledging your offending and its impacts, and the steps that you've taken to reform and rehabilitate yourself. I also note your relative youth and the importance of rehabilitation. It is not without irony, given the impact of your offending on the complainant as a very young person, that I will recognise your vulnerabilities and the fact that you were a youth for part of the offending in arriving at an appropriate sentence.

You remain agoraphobic leaving the house only when you must, and relying on grocery deliveries. You find dealing with people extremely difficult, and that is part of your socially withdrawn behaviour and your struggles with daily life, which include dealing with your personal hygiene. You struggle with financial management. You currently live with a friend you made in your teenage years, and whose mother is incredibly supportive of you. You attend your local church and discuss your offending with your Pastor. I am told that you have made progress with your mental health treatment, and that you are now referred to a psychologist. I understand that counselling is being undertaken and you are to be assessed for autism spectrum disorder.

It is submitted that you acknowledge the gravity of your actions. I accept there is some evidence that you have been distressed and ashamed by your conduct. I accept that your risk of re-offending is low but that some risk remains. This is, of course, very serious offending. It is offending in which the needs of general and specific deterrence and denunciation of the offending are coupled with the need to acknowledge the complainant's credibility.

JPD, I convict you on a single count of persistent sexual abuse of a young person, being offending over five years between 2010 and 2015. Your offending was both persistent and prolonged and committed in substantial breach of trust. Your conduct breached both the trust

invested in you by your grand-parents but also the trust of the complainant, your half-sister when she was at her most vulnerable.

You have no prior convictions. An indicative sentence in a matter such as this given the age of the complainant and where the abuse continued for a period of five years would be a period of immediate imprisonment of 4 years, however I will impose a lower sentence because of, amongst other considerations, the matters raised by Dr Jordan, your youth and apparent remorse.

There is no accrued time in custody, and I sentence you to a term of three years' imprisonment to be served immediately. I order that you not be eligible for parole until you have served one half of the period of imprisonment. I am not satisfied that you do not pose a risk of committing a reportable offence within the meaning of that term in the *Community Protection (Offender Reporting) Act 2005*. I therefore make an order that the Registrar cause your name to be placed on the register and that you comply with the reporting obligations under that Act for a period of five years from the date of your release.