

STATE OF TASMANIA v KPM
COMMENTS ON PASSING SENTENCE

19 FEBRUARY 2020
PEARCE J

KPM, you were found guilty by a jury of one count of maintaining a sexual relationship with a young person. It is for me to find facts for sentence. Facts adverse to you must be proved beyond reasonable doubt. However, in this case, the facts follow from the verdict of the jury and the indication from the jury that they found that all of the unlawful sexual acts alleged against you were proved. It is obvious that the jury accepted the truth of the evidence of the complainant.

The period of offending alleged in the indictment is between 2010 and 2014. At the time the complainant, a girl, was aged between 8 and 12. She was the daughter of family friends. She identified seven occasions on which sexual offences were committed. All of those acts were an indecent assault. However, I am satisfied, based on the evidence of the complainant, that each specific act was part of a course of regular sexual abuse during the period covered by the indictment. As is commonly the case, children who are victims of such offences are frequently unable to give particulars of each and every sexual act during a period of prolonged offending.

Your friendship with the complainant's parents began in about 2008. Her father became interested in a hobby you pursued and, over time, you became close to the family. The relationship between you and the complainant's parents was such that they permitted her to spend time with you on her own. You were liked and trusted by them and by the complainant. You spent much time with her over the course of some years. She stayed at your home and went on overnight excursions with you. She enjoyed travelling with you on a motor cycle. You commonly bought her gifts. However, the jury accepted that from almost the first time that she stayed with you, you began to touch her indecently, and that the indecent touching continued until she stopped staying with you in about 2013. Her father told the police that he thought that she stayed with you about 12 times, but I am satisfied that it was many more times than that. On five of the identified occasions you touched the complainant on the vagina with either your fingers or by rubbing your penis on her or both. The assaults took place in the bed in which she was sleeping. She was sometimes woken from sleep prior to the assault. Sometimes she woke to find you already over her. On, one identified occasion you placed her hand on your penis. She described it as a "hand job" from which I infer that it involved at least some element of masturbation. I am satisfied that during some assaults you ejaculated onto the complainant. She described feeling wetness on her legs which she had to clean up. You facilitated the touching by insisting that she wear a night dress. These were not isolated acts. Her evidence was that she was abused almost every time that she stayed with you, either at your home or elsewhere.

You are aged 60. You have led an industrious life and have no relevant prior convictions. You have made a contribution to the community in other respects as a volunteer. Those things should be recognised. They were not factors of assistance to you in the commission of the assaults. The seriousness of child sex offences, and the factors relevant to sentence, have been explained by courts in this State and elsewhere. I also have regard to the aggravating circumstances I am required to take into account by the *Sentencing Act* 1997, s 11A. All of the abuse was committed when the complainant was under your care and supervision. You committed a grave breach of the trust that she and her parents placed in you. The offences started when she was 8 and you were over 50. There is no evidence that you told her not to say anything to her parents or others, and no evidence of threats or inducements to prevent

disclosure. There is no evidence that the complainant exhibited any distress to others during the period of abuse. She did not take the opportunity to disclose your conduct in 2012 when she was asked by a police officer, a teacher and her mother. She was then aged only 10. The reasons that children refrain from complaining about sexual abuse are well understood. Expert evidence in the trial explained that young children are able to compartmentalise the good and bad parts of a relationship. Your conduct did not end voluntarily. Her father suggested that he may have decided to prevent her from visiting after the conversation with the teacher in early 2012. I find that he is wrong about that and that he and his wife continued to trust you despite suspicion having been raised not only by the teacher but by a police officer later the same year. I am satisfied that the offending continued for another year or two until the complainant, by then aged 12 or 13, decided that she no longer wanted to visit you. The complainant did not disclose what had happened until she confided in school friends in 2016, when she was 14. Her comments led to her telling some things to her father, and then a detailed disclosure to a police officer in September 2016. The complainant did not explain why she said nothing until then. However, I am satisfied that it was because of the commonly existing factors: initially from lack of understanding due to her age, and then from embarrassment, fear of not being believed and confusion about how to respond to acts committed by a liked and trusted adult family friend. Her disclosure coincides with her increased maturity, insight and education.

The only plausible explanation for your conduct over time is that your friendship with the complainant and her family was substantially motivated by your wish to have access to her for your sexual gratification, even if that was not the sole reason for the friendships. You took the opportunity when it arose and then continued to offend on repeated occasions over a period of about four years.

Sexual offences against children are presumed to cause profound and pervasive psychological harm. Sometimes the harm does not emerge for many years. The complainant now describes the type of adverse psychological impact which might be expected. She experiences feelings of betrayal and low self-esteem. For a time she self-harmed. There may be other factors involved in such conduct but I am satisfied that your crimes contributed to it. Her ability to form secure and loving relationships is hindered by lack of trust. Her sleep is interrupted. She has undertaken counselling with limited effect. The impact on her may be lifelong.

I must determine a sentence which is a fair, just and proportionate response to the total criminality involved in your conduct taking into account the age of the victim, the nature of the acts perpetrated on her, the period of offending and the impact of regular and sustained abuse. The complainant was under your care, supervision or authority, and was under 13. Those factors are significantly aggravating. Some other factors which would have made your conduct even worse are not present. There was no other associated act of degradation and no penetrative acts. However, the acts you committed were inherently degrading, particularly the repeated acts of ejaculating on a pre-pubescent child. You are not entitled to the mitigation which would have arisen from a plea of guilty. The complainant was required to give evidence and be cross examined, although the most sensitive part of her evidence was by means of her recorded police interview.

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. The nature and circumstances of the offences found proved compel the conclusion that you pose a future risk. I will allow for parole but not until you serve a term which is the

minimum required to meet the requirement for punishment, deterrence and vindication of the victim. The sentence will commence on the day you were taken into custody.

KPM, you are convicted. I make an order directing that the Registrar under the *Community Protection (Offender Reporting) Act* 2005 cause your name to be placed on the Register and that you comply with the reporting obligations under the Act for 12 years from your release. I impose one sentence. You are sentenced to imprisonment for eight years from 10 February 2020. I order that you not be eligible for parole until you have served five years of that sentence.