

COMMENTS ON PASSING SENTENCE

ESTCOURT J

The defendant has pleaded guilty to one count of possessing child exploitation material, one count of accessing child exploitation material, and one count of producing child exploitation material. I have also agreed to deal with one summary charge of distributing child exploitation material to which the defendant has also pleaded guilty.

On 15 August 2018, an authorised police operative placed an advertisement on a classified website. The advertisement was titled “Life’s Taboo Short”, with further text reading “37 yo f/m from Radelaide keen to share taboo”. Later that day operative received a response from a person using the name “Bunny luva” who provided an email address on a server which is an encrypted service. “Bunny luva” was, in fact, the defendant.

After some discussion in which the defendant gave his name, said he was married, in his 50s and had two daughters and three granddaughters, an interest in child exploitation material was raised. Following that, the defendant sent a message on 19 August 2018 claiming to enjoy sexually abusing his granddaughters aged 6, 4 and 2 months, until they were around 2½ years old.

In response to a message from the operative purportedly about his nieces, the defendant sent a message giving advice about how to sexually abuse them without being detected or reported by the child. Suffice it to say that the messages were depraved and degrading.

On 17 March 2019, the defendant suggested they continue communicating via another service. Utilising that service, the defendant sent the operative a number of images and GIF files, which included child exploitation material. The files depicted children as young as 5 in various sexualised poses, and at various stages of undress.

Checks were conducted of the address provided by the defendant, which led police to an account in the name “...” and an associated address.

On 17 April 2019, Tasmania Police executed a search warrant at that address. The defendant was not present however his adult son was. A search was conducted during which police seized an HP Omni 100 PC from the lounge room/study area. That item was subsequently examined, and 113 images containing child exploitation material were located.

The images located on the Omni PC were categorised as:

Category 1 depictions of children with no sexual activity, but depicting nudity, surreptitious images showing underwear, nakedness, sexual suggestive posing, explicit emphasis on genital areas – 81 images.

Category 2 depicting non penetrative sexual activity between children or solo masturbation by a child – 5 images.

Category 3 depicting non penetrative sexual activity between adult (adults) and child (children) including mutual masturbation and other non-penetrative sexual activity – 6 images.

Category 4 depicting penetrative sexual activity between adult (adults) or child (children) including intercourse, cunnilingus and fellatio – 21 images.

Category 7 non-illegal child material believed to form part of the series containing child exploitation material – 56 images.

On 24 April 2019 the defendant voluntarily attended the police station and participated in an electronically recorded interview. Under caution he told police, amongst other things, that here was a sexual side to why he possessed the material, and psychological factors as well. He said had been accessing child exploitation material for around 10 years. He said that accidentally came across it when looking for adult pornography. At first he ignored it and then curiosity made him look at it. He said that at first it was children in swimming costumes or underwear, but it progressed to nudity.

At the conclusion of the interview the defendant voluntarily produced a USB stick, containing 13 videos which were categorised as child exploitation material, and classified in accordance with the ANVRL system as:

Category 1: 4 videos

Category 3: 1 video

Category 3: 3 videos

Category 4: 5 videos

The images and videos possessed by the defendant on the OMNI PC and the USB stick, depicted young females aged between approximately 4 and 12 years of age. The videos depicted the children engaged in solo and mutual masturbation, along with adult men engaging in oral sexual intercourse, vaginal sexual intercourse and anal sexual intercourse with the children. The videos depicted obvious stress and discomfort from the children involved, who are seen to wince in pain when vaginally penetrated, and are clearly distressed during scenes where the men ejaculated in their face.

The defendant entered pleas of guilty at his second appearance in the Magistrates Court, and is entitled to a discount on an otherwise appropriate sentence for having done so.

The defendant is 61 years old and has no relevant prior convictions. He has hitherto led a blameless life.

I have had the benefit of a report from psychologist Mr Grant Blake. He reports that the defendant described a significant childhood sexual abuse history. He said that the range and severity of his reported post-traumatic stress symptoms did not meet diagnostic thresholds, however, a history of childhood sexual abuse, he says, is a risk factor for perpetrating child sex abuse offences as an adult

Mr Blake expressed the opinion that the defendant historically met the diagnostic criteria for an adjustment disorder, and currently meets the diagnostic criteria for social anxiety disorder. The adjustment disorder has resolved. The social anxiety disorder has been chronic and is likely secondary to a complex trauma symptom profile; however, the trauma profile does not meet the threshold for diagnosis. However Mr Blake said the symptoms were likely to be

chronic given their longevity, and problem sexual interests typically require lifelong management and support.

Mr Blake states that the defendant reported a long-standing sexual attraction to children. The sexual urges have reportedly caused him distress. He has acted on these urges. The defendant also reported sexual attraction to age appropriate adults. He therefore meets the DSM-5 diagnostic criteria for paedophilic disorder.

Mr Blake stated that the defendant attended psychology sessions to manage his suicide risk after being charged, and the psychologist there requested that Mr Blake see the defendant as she had no experience in working with problem sexual behaviour. The defendant was transferred into Mr Blake's care and he saw him for eight sessions in 2019, with additional sessions scheduled for this year.

Mr Blake reports that the defendant states that he has had a positive treatment response from aversive conditioning techniques, and states that he has not accessed child exploitation material since being charged. Mr Blake says that it is relevant that he has brought the aversive stimuli into session to demonstrate compliance with tasks. Additionally, he detailed the ways in which he uses the aversive stimuli, such as shifting between noxious smells and guilt driven narrative. He says further that the defendant appears very committed to treatment sessions. He has an excellent attendance record, is always punctual, has completed every homework and follow-up task recommended to him, and spontaneously asks questions relevant to the subject matter, thus suggesting that he is focussed and interested.

Finally, Mr Blake states that from the outset the defendant described a sense of relief that he was caught, that he denies temptation to access child exploitation material, and states that being caught has been the stop to his behaviour that he was unable to enact himself. He has demonstrated regret at the personal impacts, and remorse at the impacts to child exploitation victims and to his family.

I have also had the benefit of very helpful and comprehensive written submissions from the defendant's counsel Mr Marcenko, a practice which I heartily recommend be adopted by all defence counsel as effective advocacy which is advantageous to their clients.

I am told that for the majority of the defendant's period of offending he did not regularly access illegal material. His attraction to it was something that caused him considerable distress, and he felt a sense of relief when he learned of the police investigation which led to his prosecution.

I am told that the historic adjustment disorder alluded to in Mr Blake's report manifested in profound and regular distress in 2009. It arose out of the defendant's disturbing relationship with his father and, particularly, his father's traumatising death.

He was able to deal with his mother's death in a healthy manner, given that it was naturally caused. However, his father's suicide took a heavy emotional toll on him. When the defendant was a child his father, who was a war veteran, had often told him of his intention to commit suicide.

The defendant had also experienced some unresolved trauma from his own childhood sexual abuse. As a 7 or 8-year-old he was persistently sexually molested by a teenage boy who forced him to engage in sexual acts. That turned into a sexual relationship which was

maintained for approximately four years. He once mentioned this to a counsellor a decade ago. However, he had not, until recently, sought ongoing assistance in relation to any of his consequential psychological issues.

The report of Mr Blake confirms the defendant's genuine and admirable dedication toward rehabilitation. Since that report was published the defendant has attended four additional sessions for a total of twelve hours of one-on-one counselling. He will continue to seek psychological treatment at the practice, after Mr Blake moves to Queensland. Arrangements are being made to facilitate that. I am told that he has not been tempted to access child exploitation material since April 2019.

Prior to this prosecution the defendant was self-employed, working approximately 30 hours per week. As a result of the shame of this prosecution he completed the job which he previously had been working on but has otherwise essentially retired, save for a few small jobs. His guilt is therefore not only taking a psychological toll by exacerbating his social anxiety, but also having a financial impost.

It is important to note that at the time of the relevant offending the defendant did not have three granddaughters. He had only two and their ages did not align with those which he described to the operative. I am told that there was absolutely no grain of truth to the fictional account. Indeed, he expressly described it as 'fantasy chat' in the course of his correspondence with the undercover officer.

I am told that he is truly remorseful for each of the four counts. That remorse is manifest in all of his actions and decisions since the search of his home. During the course of his interview a week after the search, it is notable that he voluntarily handed police the USB flash drive containing child exploitation material. Police were previously unaware of this, of course.

The mitigating weight to be properly afforded to childhood sexual abuse as a factor in sentencing '*will vary greatly from case to case*', as Ormiston JA remarked in *R v AWF* [2000] VSCA 172, 2 VR 1. It has been observed that its relevance is greater in cases involving child sex abuse. However, the Crown quite rightly points out that Mr Blake's report does not seek to draw any link between the defendant's childhood sexual abuse and his offending, save to say that it is a recognised risk factor.

I take into account that the defendant had no contact with any of the children in the images. He did not move beyond his voyeurism, and there was never any risk, on the material before me, of him behaving inappropriately towards others, or moving on to become a participant in the sort of abuse depicted in the images he accessed. With the exception of the messages to the police operative, he did not create any of the child pornography. With the same exception, he did not, on the material before me, pay for it or share it with anyone, and did not involve chat rooms.

The number of images and videos stored is small compared to that which is often found in cases such as this, although the defendant has admitted to irregularly accessing such material over a lengthy period of time. The images I have seen are shocking, and are clearly injurious to the victims. The evils of child exploitation material are well known and have been often commented on by this Court.

It is obvious from the material before me that the defendant has previously been of good character and has been well regarded. However, in the case of child exploitation less weight is to be given to good character than is ordinarily the case because of the importance of general deterrence in order to prevent the abuse of children. The possession of child exploitation material is a very serious crime. As has been noted by other judges of this Court, children suffer appallingly as a result of the production of these images. To be in possession of them, without more, contributes to a demand for them, and the demand perpetuates the abuse of children.

Relevant to sentence are the number and nature and the content of the images and whether they were shared. As I said, they were not in this case shared, but the nature and number of them, in particular, the category 4 images is, at the very least, disturbing. I also note that the defendant was familiar with relatively sophisticated encrypted software.

A prison sentence would be appropriate in this case, but in all of the somewhat unique circumstances of the case I think that it is appropriate for me to suspend such sentence and I propose to take that course. I do so primarily on the basis of the defendant's remorse, evidenced by his co-operation with the police, and also because of his commendable steps towards rehabilitation, which appears to be having considerable effect, although he is always at risk of re-offending.

The defendant is convicted on all counts to which he has pleaded guilty and is sentenced to 10 months' imprisonment, which sentence I wholly suspend on condition that he commit no offence punishable by imprisonment for a period of three years.

This matter is a reportable offence pursuant to the provisions of the *Community Protection (Offender Reporting) Act 2005*. The maximum length of the reporting period is 8 years. I am not satisfied that I ought *not* to make an order under the Act, and I do so. I order that the Registrar place the defendant's name on the register and that he complies with the reporting obligations under the Act for a period of five years.

I make the forfeiture orders sought by the Crown in respect of the OMNI PC and the USB stick.