

STATE OF TASMANIA v T M H
COMMENTS ON PASSING SENTENCE

25 FEBRUARY 2020
ESTCOURT J

The defendant has pleaded guilty to one count of maintaining a sexual relationship with a young person under the age of 17.

The complainant is now 14 years of age. Her parents separated when she was approximately 18 months old. She continued to reside with her mother, but had regular contact with her father.

The defendant was a friend of the complainant's father. The complainant first met the defendant when she was approximately 4 years of age. The defendant lived next door to her father.

The defendant moved in February 2011 (when the complainant was 5 years of age and the defendant was 45). The sexual assaults occurred after he had moved. Other than being able to identify the first occasion, the complainant does not know the order in which the incidents took place.

For this crime, it is not necessary that the prosecution prove the dates on which any of the unlawful sexual acts were committed, or the exact circumstances in which they were committed. 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. The State refers to the specific sexual acts it is able to identify, but an offender may be sentenced on the basis that each specific act is part of a course of conduct involving other, sometimes many other, unspecified acts. In this case the State has identified 5 specific occasions in the 3 year period of the commission of this crime by the defendant. The conduct on the first of those occasions amounts to the crime of indecent act directed at a young person under the age of 17 years, and on the other 4 occasions, the crime of indecent assault.

The first occasion took place in the games room of the defendant's house. The complainant and defendant were playing a wrestling game. The defendant pinned the complainant to the ground, and removed his penis from his pants and showed the complainant.

On a second occasion, the complainant and her father had a barbecue at the defendant's house. Her father returned home and the complainant stayed at the defendant's house for a sleepover. She was in a bedroom at the defendant's house that was referred to as her bedroom, and the complainant was watching a movie in her 'Dora the Explorer' pyjamas when the defendant sat on the bed next to her, pulled her underpants down and licked her vagina.

On a third occasion, the complainant was in the games room. They were playing a game. The defendant pulled down her underpants and licked her vagina.

On a fourth occasion, the complainant's father was at work and the defendant and the lady he lived with were babysitting her. The complainant needed to go home to get changed. The defendant went with her. At her father's house, the complainant took her clothes off and was completely naked. The defendant removed his clothes. The complainant laid on her bed and the defendant got on top of her. He rubbed his penis on her vagina about ten times.

On a fifth occasion, the complainant was playing with the defendant, again in the games room. They were playing a wrestling game and the defendant began rubbing his penis on her vagina (both were clothed on this occasion) for a period of at least 5 minutes.

The complainant disclosed that there were other occasions, but she is unable to give any further detail in relation to these incidents.

The sexual assaults ceased in August 2014 when the complainant was 8. The defendant became a court appointed supervisor by the Family Law Court to facilitate contact between the complainant and her father.

In November 2018 the complainant disclosed to her mother that she had been sexually assaulted by the defendant on numerous occasions.

Subsequently the defendant was interviewed by police and was charged. On his second appearance in the Hobart Magistrates Court on 12 September 2019, the defendant entered pleas of not guilty to all charges, but indicated that the matters may resolve as pleas of guilty. He in fact pleaded guilty on 3 January 2020.

Because of his plea of guilty, the defendant is entitled to a discount on an otherwise appropriate sentence of imprisonment. That plea spares a young complainant the trauma which preparation for trial and giving evidence would have entailed. As is often noted, the emotional impact of having to recall and relive these events had considerable potential to cause further psychological damage, and such a plea as the defendant's facilitates the course of justice and is indicative of the acceptance of responsibility and, perhaps, some remorse.

The defendant claims remorse for what he did, although the claim carries less weight in view of his repeated offending over 3 years. I accept that he recognises the harm he caused and that he feels shame, although his decision that it was only wrongful to continue after he was appointed by the Family Law Court as a 'responsible' adult in 2014 I find quite odd. I also find troubling that he appears to lay blame at the complainant's feet because of alleged sexualised conduct on her part.

I have seen a victim impact statement prepared by the complainant. She has memories and flashbacks when she is at school and in everyday life, and she feels as though her body is not her own. She feels different from her classmates, because they still have their innocence and she does not.

She feels as though she has been used. She feels really depressed most of the time. She has anxiety all of the time. She does not like being in crowds or around people. She prefers to be by herself. She has felt suicidal. She self-harms because she feels she deserves the pain. She has ceaseless nightmares.

The defendant is 53 years old and has no relevant prior convictions.

I take into account the submissions made on his behalf by his counsel, Ms Mainwaring, in particular that he has co-operated with police, made admissions and pleaded guilty. I am told he was subject to sexual abuse as a child and that this may be seen as normalising the behaviour he perpetrated on the complainant. At the time of his offending he was using drugs and had experienced family tragedy. He has re-assessed his life and is now drug free and is in the process of resetting his mind. He feels self-loathing. He realised he damaged the complainant's life, as well as his own mother's.

As I said in *S v Tasmania* [2019] TASCCA 3, child sex offences have enormous potential to cause physical and psychological harm. Conduct of this nature has profound and deleterious physical and psychological effects on victims for many years, if not the whole of their lives. The consequences of an offence, including its effect on a victim, are important considerations in the sentencing process, and the severity of the sentence may be increased because of them. General deterrence, specific deterrence, punishment, vindication of the victim, community protection and denunciation in particular are the primary sentencing considerations (*CJP v Tasmania* [2015] TASCCA 9; *DPP v Harrington* [2017] TASCCA 4).

The gravity of child sex offending is repeatedly emphasised by the courts and the community. In this case, the unlawful sexual acts were committed by a mature adult male against a very young child.

I note that there are factors which were not present in this case which would have made the crime more serious and warranted a longer sentence of imprisonment. There were no penetrative acts and the defendant did not resort to violence or intimidation to overcome resistance. However the absence of some such factors is explained by the imbalance of power, and the defendant's conduct was a terrible breach of trust by somebody entrusted with her care. This is an aggravating feature.

As one of my fellow judges said recently, the crime of maintaining a sexual relationship with a young person, by its nature, applies to a wide range of sexual offences and consequently there is no discernible sentencing range. The defendant, however, should suffer the same penalty as would have been imposed if the individual sexual acts constituting the crime had been charged as separate crimes, such that the sentence is a just and appropriate measure of the defendant's total criminality. A lengthy sentence of imprisonment is the only appropriate sentence.

The defendant is convicted and sentenced to 4½ years' imprisonment. I order that he not be eligible for parole until he has served half of that sentence.

I also make an order that the defendant's name be placed on the register kept pursuant to the *Community Protection (Offender Reporting) Act* 2005, and that he comply with the reporting conditions under that Act for a period of 8 years from his release from prison.