

The defendant Adam Joseph Lincoln, has pleaded guilty to the crime of possessing or controlling child abuse material obtained or accessed using a carriage service contrary to s 474.22A(1) of the Commonwealth Criminal Code by possessing 68 files comprising of child abuse material stored locally in a folder on his Lenovo laptop computer.

On 26 April 2024, police executed a search warrant and seized a Google Pixel Phone and a Lenovo Laptop belonging to the defendant. He was interviewed and amongst other things made the following statements :

- That he had used peer to peer (torrent) file sharing.
- That he had accessed adult pornography on his laptop.
- That he was unable to explain why he had downloaded files to his computer.

On examination by police the defendant's laptop was found to contain a folder titled within which he had downloaded and stored the following child abuse material:-

- Four 'Category 1' images. These images depicted prepubescent girls, partially dressed with a close focus on their naked vulvas.
- 62 'Category 2' images depicting prepubescent girls, predominantly naked or with breasts and genitals exposed with a clear focus on their genitals or breasts. 11 of these images depicted prepubescent girls engaged in sex acts with what appeared to be two adult males
- Two videos categorised as 'Category 2'. These videos depicted prepubescent girls in lingerie with a clear focus on their genital and anal region.

The files were downloaded between 16 February 2024 and 25 April 2024.

The defendant was again interviewed on 17 June 2024 and made the following admissions:

- That for about a year prior to the search, his mental health had been declining and he had been misdiagnosed with Attention Deficit Hyperactivity Disorder.
- That he became obsessive and self-diagnosed as having Obsessive Compulsive Disorder.
- That he had intrusive thoughts including that he might be gay, which led him to access pornography.
- That he became concerned that he might be a predator and that he might hurt a child.
- That he started to acquire large volumes of pornography and that he would then move it to another folder on his computer. He conceded that he did this so that a casual user of his computer might not easily find it.
- That he would then delete the content but stated that he would review some (possibly every tenth image).
- That he saw that some images involving children naked with a focus on their genital/anal region but denied knowing that some of the images depicted children engaged in sex acts.
- That he had become attached to the acquisition of material and that reinforced self-loathing and that he felt ashamed of his behaviour.

The defendant is 41 years old and has no relevant prior convictions.

At the time of interception he was employed as a firefighter, however, as a direct result of this matter, he was stood down.

At the time of interception, he had part time care of his two children and had also been in a significant relationship with a partner who has two children.

On the sentencing hearing I was advised without demur:

- That the defendant has lived a blameless life and worked full time as a fire fighter for the Tasmanian Fire Service.
- That he was diagnosed by an online psychiatrist via telehealth with ADHD after a short appointment, and he was prescribed stimulant medication.
- That as a direct result of taking that stimulant medication, his mental health declined significantly and he developed Severe Sexual Orientation Obsessive Compulsive Disorder.
- The misdiagnosis of ADHD, followed by the prescription of stimulant medication and the development of SO-OCD was the only causal motivation for the for his possession of child exploitation material.
- But for the misdiagnosis and subsequent prescription of the stimulant medication, Mr Lincoln would never have offended in this way.

The position of the Crown is that "it is not disputed that the defendant's stimulant medication and SO-OCD which developed as a result of this contributed in some way to the offending by impairing the offender's judgement at the time of the offending". However, the Crown submits that he "knew what he was doing was wrong and was *to some extent* still morally culpable for the offending".

Section 19B of the Crimes Act provides:

"Section 19B relevant states:

(1) Where:

- (a) a person is charged before a court with a federal offence or federal offences; and
- (b) the court is satisfied, in respect of that charge or more than one of those charges, that the charge is proved, but is of the opinion, having regard to:
  - (i) the character, antecedents, age, health or mental condition of the person;
  - (ii) the extent (if any) to which the offence is of a trivial nature; or
  - (iii) the extent (if any) to which the offence was committed under extenuating circumstances;

that it is inexpedient to inflict any punishment, or to inflict any punishment other than a nominal punishment, or that it is expedient to release the offender on probation;

the court may, by order:

- (c) dismiss the charge or charges in respect of which the court is so satisfied"

The unchallenged evidence I have from psychologist, Dr Jennifer Wright is:

"I have considered whether Mr Lincoln's symptoms of SO-OCD impaired his mental functioning in such a manner to contribute to or cause these offences to occur. Mr Lincoln accessed and possessed CEM for a brief period of just under 9 weeks between February and

April 2024. In my opinion his SO-Obsessive-Compulsive Disorder which he developed as a result of being misdiagnosed with ADHD and taking stimulant medication *was the only causal motivation* for his having accessed this CEM. His accessing CEM and saving it were compulsive responses to obsessive questioning of his sexual orientation and his condition impaired his ability to exercise appropriate judgement, made him disinhibited and contributed causally to the offences."

The following version of facts upon which Dr Wright based her opinion is also unchallenged:

"Mr Lincoln said when he started taking Vyvanse he noticed that his libido, and preoccupation with sex increased. He said the site had CEM that would come up in the feed, and he denied ever deliberately searching for it. However, during the course of his compulsive counting ritual he sometimes landed on an image that was CEM. This led him to fear he was also a "closet paedophile". He began engaging in the compulsive ritual counting back from 10 in relation to CEM, saving the images if he landed on them. He noticed he had thoughts that he found disturbing during this time and these thoughts coupled with the compulsive ritual landing on CEM led him to feel he was "obviously evil". He said he felt highly distressed, and anxious, that his behaviour was totally contradictory to his values and he did not know what to do. Unfortunately, he did not associate the changes in his behaviour with the stimulant medication. He tried to see if he could access Employee Assistance from his workplace, but he found he could only do so if he requested it through a senior staff member within his department and he was fearful of flagging any mental health concerns. He flagged this issue with a colleague with the fire service...

One of the obsessions he developed was that he was 'a closet homosexual'. He stated, 'I couldn't shake the thoughts, and I had to keep checking'. He explained that he had never engaged with pornography before this on a regular basis. He expressed his belief that pornography was exploitative, and the women were likely to be abused, and it was probably traumatic. He said this was his values around it. However, when he began to obsess about his sexuality, he started going on the 'smutty.com' website to check he was still aroused by heterosexual stimuli and not by homosexual stimuli. However, when he did so he was compulsive in the way that he checked the material. He explained that the pornographic material would come up in a list that he could scroll through and 'refresh'. He felt compelled to repeatedly count to the 10th image to check it involved heterosexual material, then the 9th, then the 8th etc through to 0 and if that image involved heterosexual material he was reassured, he was not homosexual. He said he felt the images he looked at when he reached 0 represented 'who I was at my core'. He felt compelled to save that picture so as not to lose the answer. After some time, however he would delete those pictures due to feelings of shame."

The Crown submits that circumstances in which an order under s 19B(1) will be appropriate have been described as "exceptional", "rare", "unusual", "atypical", "special" or "singular" and as requiring something to distinguish the instant case from what may be regarded as a typical breach. These terms are not substitutes for the language of the statute, but describe the effect of applying the law. That is, unless the offence is trivial, an order which involves no punishment or only nominal punishment will rarely be an order "of a severity appropriate in all the circumstances of the offence" or will rarely give sufficient effect to the requirement for adequate punishment or take sufficient account of the need for general deterrence or denunciation.

I accept that the Crown's submission is a correct statement of the law, however given the unequivocal opinion of Dr Wright based on an unchallenged medical history, I am of the view that this is the very sort of unusual or exceptional case that the discretion under s 19B of the

*Crimes Act* was enacted to cater for. That the defendant "knew what he was doing was wrong" does not inform the discretion or alter my view given that what he was doing was driven by obsession and compulsion brought about by his misdiagnosis and the prescription of inappropriate and harmful medication.

I am satisfied that it is inexpedient to inflict any punishment in this case and I dismiss the charge against the defendant.