

TMD, you are to be sentenced on your plea of guilty to two counts of persistent sexual abuse of a young person. To protect the identity of the victims, as I am required to do, I will in the published version of these comments, refer to you, to the victims and their mother by pseudonyms.

This crime is committed if you, during the indictment period, committed an unlawful sexual act against the victim on at least three separate occasions. In August 2013 you moved into the home in Melbourne which LD shared with her two daughters, B and M. You and LD later married. In 2013, B was 12 and M was five. They became the victims of your abuse. In the case of B, there were 10 identified occasions in all, over four years or so from when she was 12 until she was 16. The sexual abuse of M began two years later in 2015 when she was seven or eight. There are five identified occasions, the final one occurring on Christmas Day in 2017, when she was nine.

I will briefly describe the unlawful sexual acts committed against B. It is not necessary to repeat all the detail conveyed to me during the sentencing hearing. I will list the occasions in the order given by counsel for the State but there is room for imprecision about the chronology and the dates.:

- firstly, an occasion not long before her 13th birthday in mid-2014 at the family home in suburban Melbourne. You called her into her mother's bedroom when her mother was in the shower. You touched and penetrated her vagina with your fingers and then licked her vagina until you heard the shower stop running;
- secondly, an occasion at home not long after the occasion just described. You pushed her up against the wall and kissed her, forcing your tongue into her mouth. Her younger sister saw this happen;
- thirdly, an occasion soon after moving to a new home in Melbourne in 2014. You approached her as she was lying on the floor in the lounge room and touched her vagina. Then, you told her that she needed to come for a drive with you. Making her think that you were driving to the shop, you took her in your car to an isolated quarry area and, despite her protests, removed her shorts and underwear and had vaginal sexual intercourse with her. You told her that the opportunity to have sex with her was too good to pass up. During the indictment period you perpetrated sexual acts against her at this location many times;
- fourthly, an occasion on 18 March 2014 when she was 12. Her mother was in hospital immediately before giving birth to your son. You gave B cannabis. You showed her a pornographic video and told her you wanted to act out the scenes. On your bed, you then engaged in oral, digital and penile sexual intercourse;
- fifthly, on a separate occasion but in the evening of the same day, you again had vaginal sexual intercourse with her. This time you attempted to penetrate her anus with your penis. M, then six, was asleep in the same bed. When M woke and asked what was happening you told her that you were wrestling;
- sixthly, an occasion in early 2015 when B was 13. The family had just moved to a new house. You had a van and you engaged in vaginal sexual intercourse with her on the rear bench seat. You ejaculated in her vagina. Similar rapes were perpetrated against her in that van on other occasions which she cannot sufficiently identify;
- seventhly, in late 2016 the family moved to northern Tasmania. By then B was 15. The abuse did not stop although it had become less frequent. You had been absent because

you had been in custody. On this occasion you pushed her onto her own bed and began kissing her. You told her that jail had been horrible without her. You kissed her again and penetrated her vagina with your fingers. You stopped when her younger brother came to the door and she managed to push you off;

- eighthly, an occasion during 2017 when B was home from school because she was unwell. She was 15 or 16. She was sitting on the kitchen floor. You confronted her wearing only a towel around your waist. You removed the towel and put your penis close to her face suggesting that she should perform oral sex. When she refused you persisted and slapped her face with your penis. You then held her head and forced your penis into her mouth. She thought she may vomit and only made you stop by eventually biting your penis;
- ninthly, on another occasion you woke her from her sleep in her bedroom, before school. You vaginally raped her and then told her to get ready for school;
- finally, an occasion before the end of 2017. B was 16. You went into her bedroom as she was trying to go to sleep. You began to rub her leg and moved your hand towards her vagina. She slapped you. At that time you heard her mother arrive home and you left the room.

Each of these 10 identified occasions occurred in the context of regular and frequent sexual abuse which occurred throughout the offending period in all the various houses in which you lived. The abuse consisted of penile, oral and digital sexual intercourse and other sexual assaults including touching her vagina, anus and breasts and having her touch your penis. At various times, especially earlier in the offending period, the abuse occurred so often that she felt it was daily. As it was put by counsel for the State, the sexual abuse was so frequent and normalised that B was unable to identify instances with sufficient particularity to amount to identified occasions. She later told the police that she had been putting up with it for so long that she gave up. The abuse occurred at home, in both her bedroom and yours, and in motor vehicles. As she became older, B had a boyfriend. She attempted with limited success to deflect your advances by using that fact, and by lying about her periods which by then had commenced. The opportunity for sexual abuse became less frequent. However, on other occasions when she attempted to resist, you used violence against her, punching and slapping her arms and legs and body, slapping her face and pulling her hair to overcome her resistance and achieve her acquiescence for fear of the consequences. She told the police of an occasion on which she told you that she thought she may be pregnant, in response to which you punched her hard in the stomach and told her that you had “fixed the problem.” She felt helpless and was not prepared to disclose to her mother what was happening because it may ruin her mother’s happiness.

There are five identified occasions of unlawful sexual acts perpetrated against M:

- firstly, in 2015 or 2016, when she was 7 or 8, you were looking after her and her younger brother at home. After her brother was asleep you raped her by penetrating her vagina with your penis for about 10 minutes. She was confused about what had happened to her and told some friends at school. The child safety authorities were notified but M was too scared to disclose to them what had happened. You accused her of lying;
- secondly, in late 2016, shortly after moving to Tasmania, you were alone with M at home. She was investigating the freezer in the laundry. You removed her clothing, penetrated her vagina first with your fingers and then with your penis, she estimated for 10 to 15 minutes;

- thirdly, not long afterwards you were again home alone with M and her younger brother. You lifted her on to a bench. Fearing what was going to happen she tried to run from you but you grabbed her, forced your penis into her mouth. You used your hands to keep her head still while you forcefully held her mouth on your penis until you ejaculated;
- fourthly, on another occasion you entered the room where she was playing and began touching her legs with your hands. This time she was able to walk away from you;
- finally, on a further occasion near the end of 2017, when she was 9, you tried to force her into your bedroom and pull her pants down. She told you she did not want to and threatened to tell her mother. You dared her to, saying that she would not be believed, but you stopped.

Your offending did not come to light until 28 March 2024 when B disclosed to her mother what had taken place. They were discussing the subject of you having been unfaithful to her mother. When asked by her mother if you had done anything to her she said that you had been sexually abusing her since she was 12. That led LD to ask M if anything had happened. She initially denied it but quickly became upset and disclosed your abuse.

The facts I have been given leave unclear whether any other sexual offending occurred between 2017 and 2024, but no such conduct is asserted or charged.

You are now aged 37. When these crimes were committed you were aged between about 25 and 29. You are an aboriginal man. I was given a report prepared by Dr Aaron Cunningham, a forensic psychologist. It was prepared in 2016 for other proceedings but outlines some personal circumstances, about which I was also given information by your counsel. Your early life was one of extreme disadvantage and deprivation. You have never had contact with your biological father who was violent. You were in the care of your mother and stepfather but in highly unstable circumstances. She had poor mental health and he was an alcoholic. You were subjected to alcoholism, sexual abuse and extreme violence. You came to the attention of the child protection authorities at a very early stage. You were removed into State care from about age 7 until you were 17. These issues manifested themselves in risk taking behaviour and conduct problems. You were expelled from a series of schools and ceased formal education at age 12. You have limited literacy. You began using cannabis at age 9 and from age 13 you engaged in pro criminal conduct and associated with criminals. When you were 13 you were kidnapped, held captive and beaten by members of a rival motor cycle gang.

Dr Cunningham referred to the possibility of a brain injury arising from a motor accident in 2001 but his testing did not reveal any intellectual disability. Dr Cunningham also considered that, at that time, you met the diagnostic criteria for PTSD arising from the sexual and physical abuse to which you had been subject. I have no evidence that any mental impairment caused, or is otherwise relevant to sentence for, the crimes I am considering.

The personal circumstances I have referred to are reflected in your criminal record. When you were a youth you were made subject to a period of suspended detention and then actual detention for indecent assaults. Since then there has been no other sexual offending but you have an extensive record for other offending both in Tasmania and Victoria. Between 2008 and 2012 your record included convictions for violence, including family violence, dishonesty, perverting justice and driving and bail offences. In 2017 you were imprisoned for 12 months from February 2017 for an attempted arson committed in 2012. In 2014 and 2016 you were sentenced in Victoria for offences including threats, violence and criminal damage to what appears to be

largely community-based orders, although it is consistent with the facts I was given that you occasionally spent short periods in custody during that period. There has been subsequent offending including an aggravated assault and associated firearm offences and causing grievous bodily harm in 2022. They are not prior convictions for sentencing purposes.

It is well accepted that I am to have regard to the profound disadvantage to which you were subjected. It may have the effect of reducing the level of your moral culpability, but I do not see that it does so to anything other than a very modest degree for crimes of this nature. The countervailing factor is the overwhelming need for the protection of children which substantially reduces the mitigatory effect of the social disadvantage. Your conduct over time removes any claim to genuine remorse. The only mitigating factor of any weight is your plea of guilty. It indicates an acceptance of responsibility, facilitates justice, avoids the need for a trial, and, most significantly of all, means that the complainants do not have to suffer the further trauma of a trial. Whilst admissions supported your guilt of count 1, the same did not apply for count 2. Additional weight is to be attached to your plea to that count. Because of that, there should be a reduction in sentence which recognises the factors to which I have referred and which may also signal to others the benefit of a plea.

Nevertheless, the only appropriate sentence is a very significant term of imprisonment. Your crimes were a very grave breach of the trust of the children to whom you had assumed a parental role, and their mother. Your responsibility was to protect and care for them, but instead you subjected them to vile abuse of the most abhorrent kind. They were under your care and control. One was of very tender age. The other was under 13 for some of the time. Much of the sexual abuse occurred in what should have been the safety and security of their home. The sexual abuse included acts of a perverse, degrading and humiliating nature, involved application of physical force to overcome resistance and was also achieved by emotional pressure and threats. Distress, discomfort and trauma experienced by the children was ignored. The sexual acts were sometimes acquiesced in by B but all acts perpetrated on both children were obviously without consent. Every instance of sexual intercourse was rape. Eight of the 10 occasions involving B included rape, sometimes multiple rapes, and one occasion of attempted anal rape. Three of the five occasions involving M included rape. Living with you must have been torture for them. Sexual acts were committed by you alone as well as in the presence of the other children. As far as I have been made aware the sexual acts were perpetrated without protection and so you exposed B to the risk of pregnancy and both of them to the risk of transmission of sexual disease.

It is to be presumed that sexual crimes against children of this nature will cause profound harm. Consistently with that expectation, the victim impact statements produced by both B and M describe emotional, psychological, sexual and behavioural consequences likely be lifelong. There is a very strong need to punish you, denounce your actions and protect the community, in particular other children, from you. The sentence must make clear to you and others that those who commit sexual abuse against children will suffer harsh punishment, with the aim, as far as a sentencing court can achieve, of protecting children by deterring such abuse. Responsible members of the society could not but experience feelings of abhorrence at subjecting these children to such acts and it is my duty to sentence you accordingly. In these comments I have, as I am required to do, taken into account the factors of aggravation listed in the *Sentencing Act* 1997, s 11A. For completeness I record that I have taken into account the factors listed in sub-section (1)(a), (c), (d), (e), (f) and (h). Had I been sentencing you for each count individually, I would have, but for your plea, imposed a head sentence of 16 years on count 1 and 13 years on count 2. After account is taken of your plea I would have imposed separate terms of 13 years and 9 years respectively. I will further moderate the total term to take account of totality and

proportionality. I will allow for parole but only after you have served the minimum term justice requires in all the circumstances I have outlined.

It is agreed that, allowing for the time that you have so far spent in custody, the sentence I am about to impose will commence on 9 December 2025.

You are convicted on both counts. You have committed two Class two offences under the *Community Protection (Offender Reporting) Act 2005*. The nature of the offences is such that I consider you pose a serious future risk to children. I direct that the Registrar cause your name to be placed on the Register and that you comply with the reporting obligations under that Act for the remainder of your life.

You are sentenced to imprisonment for 18 years. I order that you not be eligible for parole until you have served 12 years of that term.