

IN THE COUNTY COURT OF VICTORIA

Revised
Not Restricted
Suitable for Publication

AT MELBOURNE
CRIMINAL JURISDICTION

CR-21-02625

DIRECTOR OF PUBLIC PROSECUTIONS

v

JEFFREY CORFE

JUDGE: HIS HONOUR JUDGE MULLALY
WHERE HELD: Melbourne
DATE OF HEARING: 28 and 30 November 2022
DATE OF SENTENCE: 27 February 2023
CASE MAY BE CITED AS: DPP v Corfe
MEDIUM NEUTRAL CITATION: [2023] VCC 253

REASONS FOR SENTENCE

Subject: CRIMINAL LAW – Sentence
Catchwords: Plea – Historic child sexual offending – Rolled up charge of sexual penetration – Victim Impact Statement – Trauma – Mitigatory factors – Instinctive synthesis – Good character – Sentencing principles – Denunciation – General deterrence.
Cases Cited: *R v RGG* [2008] VSCA 94; *Brooks (a pseudonym) v The King* [2023] VSCA 4; *Worboyes v The Queen* [2021] VSCA 169; *Chenhall v The Queen* [2021] VSCA 175; *Stalio v The Queen* [2012] VSCA; *Hague v The Queen* [2019] VSCA 218; *DPP (Cth) v Carter* [1998] 1VR 601; *Winch v The Queen* [2010] VSCA 141.
Sentence: 12 months' imprisonment wholly suspended for two years.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Director of Public Prosecutions	Mr M. Cookson	Office of Public Prosecutions
For the Accused	Mr C. Terry	Slades & Parsons

HIS HONOUR:

- 1 Jeffrey Corfe you have pleaded guilty to one rolled up charge of sexual penetration of a child under the age of 16. Your crime was committed on 29 January 2005. Your plea of guilty came after a sentence indication hearing in which I indicated I would impose a sentence of 12 months imprisonment which would be wholly suspended for a period of 2 years.

Facts and Circumstances.

- 2 The facts and circumstances of your offending and the relevant conduct leading up to the 29 January 2005 were set out in a prosecution opening tendered at the sentence indication hearing and read during the plea.
- 3 What occurred was that at the end of 2004 and the beginning of 2005, the victim, then 14 years old, contacted you on an email-based messenger service. There were a number of emails through this period, however the communications were sporadic. The initial emails were described by the prosecution as just general communications. At one point the victim asked you to tell him your age and location. You told him accurately that you were living nearby. As to your age, you falsely told the victim you were 30 years old, though you added that if the victim considered that you were too old, then 'that was no problem, just let me know, and I won't hassle you anymore'.
- 4 With respect to the emails sent in mid-January, let me be clear, it was you who introduced the sexualised element into the conversation. Put bluntly you wrote that you would give the victim oral sex. You knew from what the victim had said about his age, that he was too young to lawfully engage in sexual activity.
- 5 On a careful analysis of the emails, they were not as grooming in nature as many of the internet based offending this court unfortunately now deals with all too regularly. This does not mitigate your offending in any way, but necessarily I need to see your offending in a spectrum of child sex offending.
- 6 Ultimately, on 29 January 2005, the victim walked from his home to your address. He

was let in by you, and once he saw you he could tell that you were not around 30 years old, as you said you were, but older and more unkempt than your self-description in the emails. The victim was directed to your bedroom where oral sex occurred almost immediately.

- 7 The victim was far from comfortable and he left after minutes. He communicated with you almost immediately afterwards, making clear that you had falsely described your age and circumstances. More importantly, the victim in that email, told you that you should not have done what you did to a young person. Again importantly, and again different to the attitude of offenders in many other cases in this court, you in your return email to the victim agreed with him that you should not have done what you did.
- 8 The victim reported the matter to the police many years later, and you were interviewed on 6 May 2021. However, much had occurred in the life of the victim and your life in the intervening years that are relevant to the sentencing task.
- 9 But before dealing with those matters, I need to make clear that any sexual offending against a child is serious criminality. Even if it is a one off incident as opposed to years of abuse by an adult of a child, the crime is depraved and the impact is likely to be felt long term. I will turn to the victim's impact statement in detail shortly, but to make the point, I refer to what were the compelling opening words of *The Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse*:

The sexual abuse of a child is a terrible crime. It is the greatest of personal violations. It is perpetrated against the most vulnerable in our community. It is a fundamental breach of the trust that children are entitled to place in adults. It is one of the most traumatic and potentially damaging experiences and can have lifelong adverse consequences.¹

- 10 While the Royal Commission was directed at institutional child sexual abuse, those words and sentiments are still important in consideration of all crimes of child sexual abuse.

Victim Impact Statement

¹ Commonwealth, Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report* (2017) 5.

11 Here there is no question that the victim has suffered significant long term psychological harm. He made that clear in his victim impact statement. The impact on him is a matter that I must take into account in the sentencing process. I had the benefit of a version of his victim impact statement at the sentence indication hearing. Accordingly I had read what the victim had written and took it into account prior to providing the indication. The victim attended court last week and read his victim impact statement to powerful effect.

12 What he said was:

From the day you assaulted me right up until the day I re-discovered the emails we exchanged back in 2005, I felt like I had this dirty, embarrassing, shameful secret that I was terrified of anyone finding out about. For fifteen years, I blamed myself for what happened on the day I agreed to meet you.²

13 Like many victims of sexual abuse, he was wrongly made to feel that what happened was his fault. Plainly you are the only one who is responsible, not him as a child. The victim should not have been made to feel like he did for so long. As he explained, that feeling was a serious impediment to him living the life he could have lived, and the life he deserved. His life was one of anxiety, depression and low self-esteem, all of which did not abate despite him seeking treatment countless times. Although he pushed the memories as far back in his mind as he could, it nonetheless effected as he said: 'pretty much every aspect of my life'.³

14 His professional life was impacted by his anxiety and low self esteem such that he left employment and ultimately and to his cost work as freelancer. His relationships were fraught as he said:

I found intimacy triggering to a point where I would avoid it, which ultimately led to the breakdown of both of my past relationships.⁴

15 The overall debilitating effect of low self esteem to the point of feeling worthless led to suicidal thoughts and attempts to take his own life.

² *Victim Impact Statement* tendered on the Plea, dated 22 November 2022.

³ *Ibid.*

⁴ *Ibid.*

16 As he said in his own compelling words:

What you did to me on that one day in 2005 planted something so toxic in my mind that for fifteen years I was convinced that I was a bad person and that I deserved nothing good. But now that I understand that I was not to blame for what you did to me, sometimes I feel like I'm mourning the fifteen years that I lost. I now know and believe that I am a good person. I deserve to be happy. I did not deserve to spend those years hating myself.⁵

17 The victim made clear that the process of being questioned at a committal and thereby the additional delay in the criminal justice system added to his trauma.

18 There is no doubt that the victim has suffered because of what you did. As required by the *Sentencing Act 1991* (Vic) I take into account the impact on the victim. I do so in a measured way, ensuring I have not been overwhelmed by what are important considerations amongst all matters I must consider.

Assessment of the Gravity and Moral Culpability

19 An important aspect of sentencing is that I am required by the *Sentencing Act* to assess the gravity of your crime and your level of moral culpability. I should make it clear that I undertook that task as part of the sentence indication process.

20 What I said then and restate now, are a number of factors that impact on the gravity of what you did.

21 Firstly, the age difference in this case is significant. The victim was 14, and you were 44 years old. You were the adult and you should not have exploited the victim's immaturity. As noted, you quickly came to this realisation when in the email exchange after the incident you agreed with the victim that you should not have done what you did with him at his young age. Of course, you knew that at the time and with that knowledge it should have caused you to pause and not to do what you did, but instead you put your own sexual gratification above all else.

22 As discussed, your emails were not at the same level of grooming and exploitation that are seen in these types of offences, but there was enough persistence so that the

⁵ *Ibid.*

victim came to your house. The emails were in the end sexualised communications with a child who had made clear he was a child. Although there was not an established relationship of trust that was exploited, a relationship of sorts emerged via the emails and in that sense, it was your responsibility as the adult to ensure that sex did not occur as the victim was too young to engage in that conduct.

23 While many of these matters go to your moral culpability, which is high, in the end I am of the view that the gravity of the offending is at the mid to lower level in the spectrum of child abuse. But again, I return to what has been said, taken from the *Royal Commission Report*,⁶ and also contained in many judgements and sentences of the Courts, and that is, any child abuse, whether or not it is one off and at this level, it remains a serious and depraved offence.

Brief analysis of the submissions of the parties

24 The prosecution submitted that a term of imprisonment of a length that allowed for a non-parole period was the only appropriate sentence. The prosecutor provided very comprehensive submissions at the sentence indication hearing which were adopted on the plea. In brief, the prosecution emphasised the sentencing purposes of denunciation and deterrence to others. There is no doubt that these are the primary sentencing purposes in determining the just and appropriate sentence in cases of this type.

25 On your behalf, an array of mitigatory matters were put forward in support of a sentence other than one involving immediate incarceration. These mitigatory matters arise from matters personal to you and from policy considerations such as the weight to be given to your plea. I turn first to your personal circumstances.

Personal Circumstances

26 You are now 62 years old. You have no prior convictions, nor any since this offending in 2005. Your only court appearance was in 2001, for offensive behaviour and resisting

⁶ Commonwealth, Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report* (2017).

arrest, which saw the magistrate adjourn the matter for 12 months without recording a conviction. It is not in dispute that the offending dealt with in 2001, plays no part in determining the just sentence for the more serious sexual offending before me.

27 Thus, it was put on your behalf that this sexual offending was an anomaly in an otherwise law abiding life. It is established law that you are entitled to rely on your lack of criminal history in asking for a merciful sentence. It is to be noted that unlike many others, who sexually abuse children, this is not a case where your lack of prior criminal history in fact allowed you to come into contact with the victim.

28 Your lack of prior convictions is also notable given that your difficult upbringing is of a kind that the courts see regularly, in a sense that many offenders react or respond to their deprived upbringing and childhood traumas by resorting to drugs and/or regular offending and anti-social behaviour. That is not the case with you.

29 As to your upbringing, you are one of seven children. Your childhood was chaotic due mainly it seems to your mother's significant mental illness. She was in and out of Larundel and Mont Park, the institutions for the mentally ill in Melbourne in the 1960's and 1970's. Your family moved a good deal as you endured poverty and neglect. You believe three of your siblings were intellectually disabled, but as was the way of things then, they were moved from the family into institutions. You know little of them. Another sibling, your youngest, was fostered and she was only reunited with her siblings after many decades. You remained close to a sister who sadly passed away three or so years ago. You are close to a brother, who you live with now in Queensland.

30 You struggled at school and by secondary school were having difficulties with your behaviour. You were asked to leave at the end of year 8. This prompted your mother to evict you from the family home. You had witnessed much violence, anger and unpredictability from your mother to that point, but nonetheless it was your family home, and there was some comfort with your siblings. To be put out on the streets in your mid-teens to fend for yourself had a significant impact on you. What is notable is the impact of your early homelessness did not lead, as it often does, in developing

anti-social behaviours. Rather it has given you a lived experience that allowed you to develop a rapport and compassion for the less vulnerable. That said, as a young teenager your sense of being rejected by your mother was acute.

31 Much of the detail of your personal history was provided to the psychologist Ms Lechner. Her report of 14 November 2022 has been helpful. You told her you were speaking of things in your past that you have never spoken of before. In particular you spoke of finally getting some factory work in your late teens which then enabled you to pay for a room in a boarding house. In one particular boarding house you were set upon and sexually assaulted by three older men. You were a young man in your late teens. You spoke of this traumatic event to Ms Lechner in those terms:

I blamed myself for letting my guard down ... I tried to deal with it as best I could, ... I thought it was my fault, that I was gay or bisexual ... I was disappointed in myself because I had set boundaries and rules for myself ... it mucked with my sense of sexual orientation ... I had flashbacks.⁷

32 You continued to work hard in factories, in the transport industry, as a security guard and in cleaning. In your 20's you began a relationship and married. The marriage formally lasted 7 or so years, but your friendship with your ex-wife has endured and strengthened. You and your partner had a daughter. You remained close to your ex-wife throughout and co-parented your daughter who is now 36. As noted, your friendship with you your ex-wife remains strong and you share a house with her in Queensland. Your daughter and her 4 children are very much part of your life, with you and your ex-wife caring for the 4 teenage grandchildren during the week. You have a stepson with who you have a close relationship.

33 You have a good relationship your ex-wife's extended family here in Australia and Fiji. What is clear is you have very strong supports. Your ex-wife and your daughter wrote very sincere and helpful letters to the court. They see and wrote of your many good qualities of generosity and compassion. I will quote from those letters and others shortly.

⁷ Psychological Report of Carla Lechner, dated 14 November 2022, p 3.

34 Ms Lechner subjected you to testing that established your account to her was not deliberately exaggerated so as to cast you in a good light for these court proceedings. She concluded you were being honest and your experience of traumas was authentic.⁸

35 She concluded your exposure to violence, neglect and rejection in your childhood or formative years, meant you had complex developmental trauma. Also, the acute episode of trauma arising from being sexually assaulted meant you had aspects of Post-Traumatic Stress Disorder which you had dealt with over the years by avoidance. In short, you had buried these experiences deep in your psyche. You now realise that, given the stress these criminal proceedings have understandably caused, you need to and you want now to address your past experiences with expert psychological support in the near future.

36 I will return to other aspects of Ms Lechner's report which deals with your future, in particular whether you present as a risk for future sexual offending.

37 First, I want to say more of the impression you have made on your family and others who you have worked with. These are the people who know you best and they give important details as to your good character and your contributions to your community.

Your ex-wife wrote:

As a husband, Jeffery is caring and I have very high regard for him. Jeffery is a loving and devoted father to our children. Jeffery is also a very supportive person who has the ability to see and understand things from another person's perspective. Our daughter was diagnosed with epilepsy in 2003 and ever since, Jeffery became a vocal advocate for the Epilepsy Foundation of Victoria.

Jeffery is a person who places everybody's needs before his own. He loves to help people with special needs and he supports Charity works for good courses. He organised a 'Go Fund Me' drive where he assisted families in-need at my village in Fiji. This was after a category 5 cyclone struck Fiji in 2020.⁹

38 Your daughter wrote:

I consider myself very blessed and fortunate to call myself the daughter of Jeffrey Corfe. I have known him my whole life, thirty six years. Not only is he my Dad, he truly is my best friend. I hold my Father in the highest of regards, he has always gone above and beyond for me and my children, his four grandchildren whom he has also been more like a father figure to. He has worked hard his whole life to ensure that we have the best

⁸ Ibid.

⁹ Letter of Ex-wife, undated.

opportunities available to us and has always taught us the values of respect and kindness to which he has led by example.

Over the years I have witnessed my father put others before himself, his passion to help those less fortunate and to look past social stereotypes and judgement to see people for who they really are and to help them in any way possible, this is a trait of my Father I have always admired. Growing up I recall my Dad bringing people over to our house, feeding them, giving them a warm and safe space to stay whilst assisting them in making their next move in life, when they would come over we would treat them like a member of the family, no different to us as that is how my Dad taught us to treat others, he would always say "treat others how you want to be treated".

At the age of fifteen I was diagnosed with Epilepsy, not long after my Father began his work with the Epilepsy Foundation and gave his time voluntarily to aid and assist other families who were going through the same struggles as us dealing with and learning to live with Epilepsy.

I can truthfully say that my Dad's life has been one of helping others, My Dad does not have much, he is not wealthy and lives a very simple life yet he has never turned anyone away that needed a helping hand in life.

Since receiving news of these charges, it has saddened me, broken my heart to see the impact it has had on my Dad. It has affected his mental health which has led to problems with his physical health.

In closing, I would like to say that my Dad is a good man, a man of his word and a man of integrity. I have always known my Dad to speak openly and truthfully. My children and I love him dearly.¹⁰

39 After a solid work life in 1980's to 1990, you ended up as a contract cleaner at Flagstaff Crisis Accommodation Centre in Melbourne. This hostel for homeless men was a very challenging workplace for all. The afterhours manager there was Mr John Kennelly. In 2003 Mr Kennelly moved to be the manager of a similar hostel for the homeless, the Anchorage Hostel in Abbotsford run by the Salvation Army. In his letter to the Court, he wrote:

Soon after taking up the position of manager a vacancy occurred on my staff for an after hour's disability worker. I personally head hunted Jeff to be part of the Anchorage Team due to the qualities he had previously displayed to me. Jeff displayed a caring, non-judgemental disposition, patience and understanding of the journey and circumstances these men had been on, and most importantly the passion to make a difference. I believed I would be getting a team member I could trust. I was Jeff's Manger in this role from approximately 2003 until March 2013, during that time Jeff displayed all of the above mentioned qualities and more.

As most of the residents at the Anchorage had burnt their bridges with friends and family members the Anchorage became their family. Jeff would often volunteer to assist with recreational activities in his own time. In many cases residents would die prematurely due to the lifestyle they had led, Jeff would regularly attend their funerals in his own time. He gave so much of himself to those that had so little.

¹⁰ Letter of Daughter, dated 17 June 2022.

I am aware of the tireless and dedicated charity work Jeff did with the Epilepsy Foundation and White Lion Youth over a number of years

I have also witnessed firsthand the stress these allegations have placed on Jeff and that he has required Doctor and Specialist Medical assistance during this time.¹¹

40 As well as your work with the Anchorage for many years, you also became great supporter of other charitable foundations. You became involved with the renowned and successful Reclink football league, helping the homeless and vulnerable. A great supporter of the down trodden, Father Bob Maguire knew you well and continues to support you. He wrote to the court:

I, Father Bob Maguire, have known Joffa for approximately twenty years.

Joffa was of great support to my foundation in caring for the needs of the less fortunate in the City of Port Phillip. One such area of support was with Reclink Football matches.

I am also aware of Joffa's community compassion and so offer my unconditional support of Joffa.¹²

41 There has been mention of your work for the Epilepsy Foundation. Mr Jeremy Maxwell who was the General Manager of Fundraising who appointed you as a volunteer epilepsy ambassador wrote to the court as follows:

As an Epilepsy Ambassador Jeff generously represented the Epilepsy Foundation in many circumstances, guest speaking at public dinners, media interviews and supporting fundraising events. He did so in a professional and engaging manner and no activity was too small or not worthy of his attention, while it was an organisational wide effort his work went a long way to successfully building the profile of the Foundation.

Jeff has the unique ability to talk to everyone at a level they find engaging and trusting. I saw this many times whether it was politicians, businesspeople, community service clubs or young children. I have often marvelled at his natural ability to communicate so easily and so broadly.

Away from the Epilepsy Foundation we formed a good friendship, one I value very much. I got to see his work with disadvantaged and vulnerable people, working and mentoring in men's shelters, supporting other welfare organisations as an ambassador, running food, material aid and blanket drives.

I regard Jeff as one of life's great characters and truly believe the world is a better place with him in it.¹³

42 Your ex-wife's extended family wrote of all your efforts to raise funds and secure much needed supplies and food for those in Fiji whose lives were devastated by the 2020

¹¹ Letter of John Kennelly, dated 6 June 2022.

¹² Letter of Father Bob Maguire, dated 6 June 2022

¹³ Letter of Jeremy Maxwell, undated.

cyclone.

Good Character

43 Section 5(2) of the *Sentencing Act 1991 (Vic)* sets out various factors that must be taken into account. I have mentioned a number already. One of those factors set out in s 5(2)(f) is an offenders previous character. Unlike any other of the factors in s 5(2), the role of an offender's previous character is elaborated upon in s 6. What is there set out in s 6 is that in considering an offender's character, a court can assess: the number, seriousness, date, relevance and nature of prior convictions and findings of guilt. Also, a court can consider an offender's general reputation. There is a final consideration s 6(c) which states that in determining a person's character, the court can consider any significant contributions made by the offender to the community.

44 It seems to me Parliament was permitting the sentencing judge to take into account significant contributions to the community over and above the usual good character considerations. In other words, your lifelong, genuine commitment to helping others as evidenced by the powerful testimonials from those at the coalface, who saw what you did over many years, means that there is more to the sentencing task than simply setting out common mitigatory matters such as your lack of relevant priors before and since this offending in 2005. You can call on, not only those weighty mitigatory factors of no prior or subsequent offending in asking for a merciful sentence for this one off episode of sexual offending – you can also add the significant mitigatory weight of all your contributions to the community, which I find engage s 6(c) of the *Sentencing Act 1991 (Vic)*. This does make your case more unique. I have rarely found s 6(c) engaged.

45 What I make clear though, is good works do not excuse your crime or make it less serious. These matters remain considerations with much force and weight against you. The point is that there are powerful and unusual mitigatory matters that must be factored into the sentencing task that operate in your favour.

46 At this point I refer to the important words of Justice Ashley in *R v RGG*,¹⁴ – a

¹⁴ *R v RGG* [2008] VSCA 94 [3].

sentencing appeal where the offences were numerous serious sexual crimes committed against two children over many years. His Honour said:

[3]... There is an ever-present danger, I think, when a person is to be sentenced for child sexual offences, that lip service and nothing more will be paid to matters going in mitigation. In this case, there were substantial mitigatory circumstances.¹⁵

47 There can be no doubt you can call on very significant matters in mitigation. I must give these matters proper and practical weight in the sentence synthesis. I must not gloss over them because your crime is abhorrent.

III Health

48 Moving to your present circumstances and in particular your present physical health; I was provided with some evidence of concerning cardiac problems. There were other health issues, but your cardiac ill health is the most pressing.

49 First I note, that as was recently affirmed by the Court of Appeal in *Brooks [a pseudonym] v The King*,¹⁶ the state of an offender's health is always a relevant sentencing consideration. I will outline the evidence of your ill health before returning to the caution that I must have to ensure such matters do not unduly influence the appropriate sentence.

50 Your current general practitioner in Queensland noted you were diagnosed with atrial fibrillation in February 2022. He then reported you suffered from a heart failure on 3 June 2022. There is no elaboration on this significant diagnosis. More details are provided in the discharge summary from the Ipswich Hospital where you were admitted on the 27 October 2022 and remained until 8 November 2022. Before you were admitted to hospital, you had onset of left leg deep vein thrombosis in late September 2022. It would appear that following the onset of your atrial fibrillation, you developed fluid retention or difficulties with fluid overload. This caused lower leg swelling initially and then worsened to shortness of breath indicating fluid retention was impacting on your lungs. There were also indications that you caught a respiratory disease resulting

¹⁵ *Ibid.*

¹⁶ [2023] VSCA 4 [18-19] [22]-[30].

in the onset pneumonia.

51 You were taken to Ipswich Hospital on 27 October 2022. I would have benefitted from a report from your consultant cardiologist which would have explained things and possibly given a prognosis.

52 Doing the best I can with medical terms in the Discharge Summary, when you were admitted you had a background of significant heart failure in both your cardiac ventricles. This was implicated in your fluid overload. The treatment for this was a pharmacological infusion of a drug to lower your fluid overload. The infusion was not short term, but for around 10 days in order to secure appropriate balance in your fluids. As I understand, all this is very concerning.

53 Biventricular heart failure is, as it sounds, deeply worrying. It causes complications in removing fluids which impacts on your respiratory health.

54 Also it was confirmed in investigations at the hospital, that you have a large atrial secundum defect, that is a congenital defect often referred to as a hole in the heart. Often such a condition is detected and treated satisfactorily in childhood. You were not in a family setting that allowed for this. Thus as an adult it is a significant contributing or aggravating factor in your declining cardiac health. This Discharge Summary indicated this congenital defect needed to be further reviewed for considerations of implanting a device to close the defect. I was told at the plea hearing there is a plan for a cardiac procedure in July or August, hopefully a key hole procedure to remedy the defect with a device.

55 It was also noted in the discharge summary that you have or had gout. Again, this is a complication, as something usually implicated in getting gout – excessive alcohol – is not the case here. You do not drink.

56 Thus, it would seem clear you have significant cardiac problems. These problems need management to ensure this is no rapid deterioration, however it seems there is no magic cure or capacity to reverse, save for the possibility of a cardiac device and

general improvements in lifestyle relating to smoking and weight.

57 But these are all matters for your doctor. The relevance for sentencing is as stated, the courts always consider ill health. As *Brooks* makes clear ill health cannot mean an inadequate sentence is imposed.¹⁷ Also, the state has obligations to provide equivalent medical services in prison as are provided in the community. However it is well recognised that any term in prison would be especially worrying and onerous given your cardiac vulnerabilities. Your ill health is a factor that I have taken into account but in the measured way the authorities have established as appropriate.

Psychological Health

58 As to your psychological health, I have already mentioned the conclusions of Ms Lechner and importantly your insight that you have to do something about aspects of your life that have been bottled up. I return to the report of Ms Lechner because of the important matter of whether you present as an ongoing risk of like offending. The psychological material makes it clear that you are a low risk of like offending. That has been ascertained using the well accepted psychological predictive tools such as the STATIC 99 and the Risk of Sexual Violence Protocol. I add that Ms Lechner's own clinical analysis accords with the test results. In my view all the factors and circumstances of your current position makes future offending in like manner a very remote, if not a non-existent likelihood.

59 This was a one-off event during a time when you were struggling with your own sexuality. It was not, as we mostly see, a blatant exploitation of an existing relationship. The breach of trust here is at the lowest end. That must be recognised. Your prospects for remaining law-abiding are very solid, your risk to the community minimal.

60 These matters assume real importance because the sentencing purpose of protection of the community is ordinarily a weighty matter in crimes of this type. In your case, I do not need to give emphasis to protection of the community, as the facts and

¹⁷ *Brooks [a pseudonym] v The King* [2023] VSCA 4.

circumstances of the offending together with your behaviour since 2005, and the expert evidence all lead to that conclusion.

61 In practical terms, as far as the evidence shows, you have rehabilitated and resumed a law abiding lifestyle many years ago. The likelihood is, you will continue in that vein.

Plea of Guilty

62 What I gave significant weight in the determination of the appropriate sentence is your plea of guilty. The Court of Appeal in the important decisions of *Worboyes v The Queen*,¹⁸ and *Chenhall v The Queen*,¹⁹ have directed sentencing judges to give greater weight or discounts for those who plead guilty in these times when the trial lists of this court are beleaguered.

63 The Court of Appeal in *Worboyes* said the following:

As is abundantly clear, one of the pernicious effects of the current pandemic is that the lists of the criminal courts in this State have become severely congested. Unacceptable delay in the disposition of criminal cases is endemic. Indeed, it is not an overstatement to say that the system of criminal justice in this State is in crisis, requiring a response from the courts. We therefore consider that, whilst the courts of this State continue to labour under the adverse effects of the pandemic, a sentencing court should view a plea of guilty as carrying with it a greater utilitarian benefit than at other times and in other circumstances, and, concomitantly, as attracting an augmented mitigatory effect on sentence, simply because the plea will benefit the beleaguered administration of justice. Given the unhappy state of the courts' lists, the courts must, in an endeavour to alleviate the strain on the system, encourage those accused who are guilty to so plead. Such encouragement must come from an actual and palpable amelioration of sentence.²⁰

64 The Court of Appeal in *Chenhall*,²¹ decided at the same time as *Worboyes*, made it clear that if a sentencing judge did not give a greater benefit to a plea of guilty made at a time when the Court lists were under the great strain caused by the pandemic, then the sentencing judge would fall into sentencing error.²²

65 The utilitarian benefits must mean, in certain cases, a sentence will not just be of shorter duration in terms of imprisonment, but a sentence of a different kind. The key

¹⁸ [2021] VSCA 169.

¹⁹ [2021] VSCA 175.

²⁰ *Worboyes v The Queen* [2021] VSCA 169, [35].

²¹ *Chenhall v The Queen* [2021] VSCA 175.

²² *Ibid* [29]-[36].

point made by the Court of Appeal is that the sentence imposed in these times must operate to encourage others who are guilty to plead guilty. This was a matter raised in the victim's impact statement where he said that the delay and the cross-examination of him at the committal, added significantly to his trauma, when you knew all along you were guilty.

66 Most importantly, your plea has relieved the victim of giving evidence and thus he would not have to relive his traumatic experience in the additionally traumatic forum of a trial before a jury. His victim impact statement makes clear this consideration is of real significance to him. This is a weighty factor in the overall sentencing task.

Current Sentencing Practices and Historic Offending

67 A matter set out in the *Sentencing Act* that I am required to have regard to is current sentencing practices. That consideration is complicated by reason of your crime being committed in 2005. The Court of Appeal decisions in *Stallio*,²³ and *Hague*,²⁴ give guidance.

68 In the more recent decision of *Hague*, the Court of Appeal said the following:

The sentencing practice that applied to offending of this kind at the time of the offence is relevant to the extent that it can be ascertained... However, just as current sentencing practice cannot control the sentencing discretion in a particular case and does not cap and collar the sentence, past practice cannot have a greater or more controlling effect.²⁵

69 What can be ascertained from the appellate cases and my own now long experience, is that in the past prison sentences were from time to time imposed but wholly or partially suspended for offending far graver than your crime. Also non-custodial sentences were far from rare for offending more akin to your one-off crime. However, as the authorities make clear, I do not fix my sentence as if I was hypothetically imposing a sentence in 2005 or thereabouts. My sentence must accord with current community attitudes to offending of this kind. Much has been learnt in recent years,

²³ *Stallio v The Queen* [2012] VSCA.

²⁴ *Hague v The Queen* [2019] VSCA 218.

²⁵ *Ibid* [252].

especially about the enduring impact of sexual abuse on victims.

70 That said, your counsel identified a number of non-custodial sentences imposed in recent times for historical child sexual offending. There have been suspended jail terms imposed by judges of this court in pandemic times for like offending.

Just and Appropriate Sentence

71 The appropriate sentence is always a complex question and perhaps it is at its most acutely complex in sentencing for historical sexual offending.

72 The sentence I impose must be a just one, in the sense that it punishes you to an extent and in a manner appropriate to all the circumstances. It is always a grave step to send someone to gaol for the first time. Actual or immediate incarceration is the punishment of last resort. It can only be the sentence imposed if the circumstances compel it. If all the sentencing purposes can be met by a sentence less than immediate imprisonment, then a court cannot order immediate imprisonment.

73 The complexities of this case caused me to give anxious consideration at the stage of the sentence indication and since. I have returned to the legislation that governed the imposition of suspended sentences and in particular s 27 of the *Sentencing Act* operative at the time. Given when your crime was committed it is the relevant legislation for your case.

74 What was required of a sentencing judge by that legislation was to first conclude that a sentence of imprisonment was warranted. In that regard, given all the circumstances of the case, that is the factors that establish the gravity, your high moral culpability, and the impact on the victim, together with all the matters in your favour, in my view your case plainly warrants a sentence of imprisonment. The words of the legislation applicable at the time were that the Court could then order that the sentence of imprisonment be suspended, wholly or in part, if the Court was satisfied that it desirable to do so in the circumstances.

75 Each case must be determined on its own individualised circumstances. In the

absence of a statutory mandate, a sentencing judge has a wide discretion in determining what is the just and appropriate sentence and whether it is desirable in the circumstances to suspend a sentence of imprisonment wholly or in part. The overriding principle is that a just and appropriate sentence must be fixed in accordance with the sentencing purposes that are set out in the *Sentencing Act* and those purposes alone.

76 Here, the sentencing purposes of denunciation and general deterrence loom large. That said, it was well understood from all the appellate authorities, that a suspended sentence, was seen to give effect to general deterrence.²⁶ It is in the end a matter of degree because it would not be desirable to suspend a term of imprisonment if the important message of general deterrence would thereby become too diluted, or if denunciation was undermined.

77 As I said at the time of the sentence indication, and now repeat, the process of giving a sentence indication, requires the application of an instinctive synthesis. It is all about the individual circumstances of the offence and the offender. In this case, the gravity of the offending and your moral culpability, taken with all the mitigatory matters, leads me to conclude a sentence of imprisonment is a just and appropriate sentence, but that in all the circumstances of your offending and your life, both before and after, and your current circumstances, I am satisfied that it is desirable to wholly suspend that sentence. The message of general deterrence would not be unduly diluted, nor would denunciation be undermined.

78 Thus, as I indicated, for the rolled-up charge of sexual penetration of a child under the age of 16, I sentence you to a term of 12 months' imprisonment, and I order that the sentence be wholly suspended for a period of two years.

79 I am required by the legislation governing the imposition of suspended sentences to explain to you that should you commit any offence punishable by imprisonment either in Victoria or more relevantly for you in another state, then you will be returned back

²⁶ *DPP (Cth) v Carter* [1998] 1VR 601, [607]-[608]; *Winch v The Queen* [2010] VSCA 141, [50]-[51].

before me for the breach of the suspended sentence and in all likelihood, or near certainty, you would then be resentenced and ordered to serve the whole of the suspended sentence of 12 months imprisonment that I have just imposed.

80 Had you pleaded not guilty to this offence and then been found guilty by a jury, I would have imposed a sentence of 2 years 4 months with a minimum term of 14 months to be served before you would be eligible for parole.

81 Given the offence you have committed, you must register on the Sex Offenders Register and remain registered for 15 years.