

*In the Magistrates' Court of Victoria*

*at Ballarat*

Case K11130536

Between

Jennifer Leith (Informant)

and

Leslie Lane (Accused)

Counsel

For the Informant: Ms K. Swaidisir

For the Accused: Mr J. Kantor

**Hearing-** Ballarat 6/2/2020

**Judgement-** Ballarat 21/2/2020. Magistrate R Saines.

1. The accused here, Leslie Lane is to be sentenced in respect of two offences for which he entered a plea of guilty on 6/2/2020. Both offences were committed upon a boy whom I shall refer to as "G". All offending was committed in 1974 and 1975 when G was approximately 13 years old and the accused was approximately 28. The first (charge 4) was an indecent assault committed by the accused sucking G's penis on numerous occasions over a period of months. This was a charge of a course of conduct over time. The second (charge 3) was an indecent assault committed by the accused having G suck on his own penis on one occasion. It appears all such offending continued until ejaculation.

2. Both offences were at the time, described as indecent assaults. They are punishable by up to 5 years imprisonment on each. If committed now they would be offences of sexual penetration of a child under Crimes Act S.49B and punishable by up to 15 years of imprisonment, although it would be plain error to apply current statutory provisions to this sentencing, other than to observe that both offences involve sexual penetration. Currently, such penetration cases cannot be heard or determined summarily but previously cases of indecent assault could be. This matter arises for sentencing in this court, following application and determination for summary jurisdiction made by the accused, and granted as per Criminal Procedure Act S29 on 6/2/2020.

3. The context of the offending involves a number of aggravating features.

- a) Although the accused at the time of offending had no prior convictions, this was not the first time he had engaged in offending of this nature.
- b) The accused was then a serving police officer in Ballarat.
- c) In his role as a police officer he had apprehended G's older brother riding a motorcycle when unlicensed. As a result of this he approached their mother and offered to assist the family by taking G on outings with him.
- d) As well as taking G fishing and on other ordinary recreational activities, he provided G with magazines showing naked adult females and sexual content, said by him to have been confiscated by police.
- e) After he gave G some opportunities to view these magazines the accused had G remove clothing to enable exposure & photographing of his genitals, and also to enable the accused to conduct fellatio upon G, which continued as a course of conduct over time.
- f) Prior to this occurring the accused had told G that his older brother would go to jail for a long time for riding unlicensed such that G understood the accused to have power or authority to influence that outcome.
- g) The last occasion that G attended the accused's own residence was when the second offence (charge 3) was committed. Some days later the accused visited G's home and informed his mother that the investigation of unlicensed driving was not proceeding. When G found this out, he declared his wish not to go to the accused's house anymore.

4. These features amount to a premeditation and a grooming process in the context of a serious example of continuing and multifactorial breach of his duties as a police officer and breach of a position of trust and authority with the child G and his family. Accordingly, I find these offences to be a most serious example of such offending, with aggravating features.

5. The offending was not disclosed by G until about 2016 when he told his wife and police. However, Victim Impact Statements provided by G and his wife reveal a deep and profound impact upon G since the offending, and in particular following the psychological release that his disclosure created. The accused may not, in 1975 have been able to foresee the extent of that impact. But he would have known his conduct upon a vulnerable victim to have been wrong, and seriously so. I find the impact upon G to extend to adversely affect his marriage and life in general, in a manner likely to be long lasting if not permanent. Certainly, it is approaching an adverse impact into the 5<sup>th</sup> decade now. I am required to and indeed I do have regard to these matters, in relation to sentencing.

6. In the hearing of this matter, I remarked that this is a unique case. That was meant for a number of reasons, however a central reason for this is that the accused is to be sentenced for a sixth time for sexual offending upon children, but on all six occasions including here, he is to be sentenced as a person without prior convictions. By way of explanation, the accused as a younger adult, engaged in unlawful & repeated sex offences against children between approximately 1972 and mid to later 1980.

During that time the accused was a person without any criminal convictions. As disclosures were subsequently made, he was convicted, first in the Magistrates' Court in 1996, then 3 times in the County Court in 1998, 2006 and 2017, and once in the Newcastle District Court in NSW in 1998. Despite having served terms of imprisonment between 1996 and 2018 on 4 occasions, at the time of the offending against G, there were no prior convictions. This is not to say subsequent convictions have no relevance, but the circumstances of this chronology are somewhat unique.

7. The other feature of this case which is remarkable even if not unique, is the remorse and the personal rehabilitation of the accused person, which has become evident since the 1980's. The detail of that will be described later but these factors, which must be balanced as part of the sentencing process, amount to very persuasive factors.

8. The objectives of sentencing include that this court must pass a sentence which adequately expresses denunciation of the offending, also expresses just punishment and an appropriate message of deterrence. It must also consider rehabilitation. But having regard to the seriousness of the offending and of aggravating circumstances as well as the impact upon G and his family, there is no sentence other than imprisonment which meets these sentencing purposes. Indeed, counsel for the accused accepted this proposition. Despite the statutory abolition of suspended sentences of imprisonment in Victoria in 2013 and 2014, such a sentence remains available in respect of offending before that abolition. So there remains here, a determination to be made whether the sentence to be imposed is to be suspended wholly, in part or at all. This issue was a central part of submissions of both counsel on the plea hearing.

9. Counsel for the accused put forward a number of mitigating factors to support his submission for a wholly suspended sentence. The first of those was evidence of remorse and an early plea of guilty by the accused. It is clearly accepted that an early plea of guilty entitles any offender to a measure of leniency. A plea of guilty has utilitarian value, reducing delay and cost of proceedings. Furthermore, in cases of sexual offending, where a victim is spared the ordeal of public exposure and of the process of court testimony and cross examination as to honesty or reliability as a witness, it is more significant. Here, the accused elected not to challenge any assertion made by G as to the circumstances, and his early plea of guilty meant G has not been required at court as a witness at all. The accused's own evidence of his self-disgust & wretchedness of his offending, and of his realisation and self-education of the shameful and deeply harmful conduct he engaged in, does establish true remorse. These matters do entitle the accused to a significant measure of leniency.

10. An additional aspect of the remorse of the accused, is his conduct since being sentenced previously. That conduct has persuaded no less than 3 County Court judges in Victoria, to conclude that the offender's rehabilitation has been excellent and prospects of reoffending are minimal, or better. All the evidence to support those conclusions need not be recited here, but was presented to me, both in the form of earlier sentencing judgements and supporting documentation as well as the accused's oral evidence, a summary of which includes-

- a) The accused has, despite the disruption of serving imprisonment on several occasions, succeeded in maintaining employment, self-employment and engagement in the community, in a very positive manner. It appears that his acceptance of his past offending has included his preparedness to disclose it to those who have employed and worked with him. Notwithstanding such disclosure, he gained the trust and praise of employers and others in his community. He has worked in areas which have been of considerable contribution to the community, particularly in the decade up to 2013 in Aboriginal social enterprises and employment services.

- b) Evidence, particularly from Ms D. Ginn from the NSW Child Abuse and Prevention Service, from her correspondence in 1997, and from consulting Clinical Psychologist Mr J. Cummins' report 16/1/98, verifies that his insight and personal changes in respect of understanding paedophilia and dealing with it, has been exemplary. These observations are updated and reinforced by Forensic Psychiatrist Dr L. Turnbull in his assessment and report 19/1/20. The rehabilitation from such a sordid history of offending, is multi layered and appears comprehensive, involving significant personal change and self-examination.
- c) The accused has completed all previous parole and suspended sentence periods without further breach, and it appears there are no other outstanding charges or other legal proceedings, in relation to any other offending.
- d) It was established in earlier sentencing hearings, that there is no evidence of this accused further offending since at least 1989. Such that I accept there is no evidence to disturb a finding of now more than 30 years without any form of reoffending.

11. I conclude that for the purposes of sentencing, like the learned County Court judges before me, I proceed on the basis that there is little if any evidence of risk of reoffending, and on the basis that the need for emphasis upon specific deterrence here, no longer exists.

12. I also accept that now, at age 73, the accused has a number of medical issues, particularly hypertension, diabetes and orthopaedic need for bilateral knee replacements, such that for him, time within the prison environment would be more onerous than for most others.

13. The determination of whether the sentence of imprisonment here should be suspended, requires an assessment of the principles of proportionality and totality, as well as application of the provisions of S.27 of the Sentencing Act, as it was prior to the 2013 amendments. Consideration of proportionality and totality includes an acknowledgement that there have been 4 occasions this accused has served time in prison, for his past offending upon other children. Because of delay in complaints by these children, and delay in prosecution, a total or overall sentence for the totality of relevant criminality has not been possible. No blame is imposed upon G, any other victim or any prosecuting authority, for this delayed sequence of events.

14. As to S.27, subsection (1) creates a discretion to suspend a sentence of imprisonment if a court is satisfied it is desirable. This is a general discretion, but is subject to mandatory factors set out in S.27(2), to be considered. These factors broadly involve the balancing of the seriousness of the offending, and the need to emphasise denunciation and general deterrence, against prospects of reoffending.

15. These matters have all been considered by the 3 previous County Court Judges, and have produced varying outcomes. Firstly (1998 Judge Crossley) a head sentence with a relatively short non-parole period, secondly (2006 Judge Hannan) a wholly suspended sentence of 18 months, and thirdly (2017 Judge Mullaly) a total sentence of 3 years imprisonment, half of which was suspended. The last of these was the subject of appeal to the Court of Appeal (2017 VSCA 289) where the court in a joint judgement of Ferguson C.J and Maxwell P. determined it to be a lenient sentence in the circumstances. In doing so, particularly in paragraphs 24-35, the Court of Appeal weighed the same or very similar factors as are to be weighed here and determined the sentence of the County Court should not be disturbed, on ground of it being excessive. I accept the sentencing in that case was for offending against two child victims, at least one of which was slightly younger than G. Nevertheless, the Court of Appeal decision contains remarks which are, in general, of assistance here.

16. Counsel for the Accused submitted that having regard to the nature of offending and the single victim dealt with by Her Honour Judge Hannan in 2006, that I should like her, wholly suspend the sentence, in part because of similarities between the facts here and presented to Her Honour. I have considered this at length. Despite my great respect for Her Honour's experience and standing, I consider the essential gravity and seriousness of the offending upon G, to be elevated, such that I am unable to accept it proper to exercise the S.27 discretion in the same manner as her.

17. The offending upon G was not only abhorrent having regard to the age and vulnerability of G, but I find the aggravating features identified in paragraph 2 above to be so serious, and the need for denunciation and general deterrence is so important, that a wholly suspended sentence cannot be sufficient. I am satisfied the clear remorse and circumstances of the accused, as well as his plea of guilty, warrant a partial suspension. His medical condition, which has become more problematic since 2017 also supports suspension.

18. In respect of charge 4, being of indecent assault upon G, as a course of conduct, there will be a base sentence of 15 months imprisonment. In respect of charge 3, being an indecent assault upon a single occasion, there will be a sentence of 6 months imposed, 3 months of which is imposed cumulatively. This is a total effective sentence of 18 months, of which 12 months will be suspended for a period of 2 years.

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