



MAGISTRATE'S COURT
FALKLAND ISLANDS

MC/CRIM/43/11

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V

WILLIAM HARVEY

Sentencing Remarks

- 1) You have pleaded guilty to an offence of sexual grooming, and 3 offences of penetrative sexual touching, committed against a female victim in May of this year, when you were 38 years old; the victim was 15 only 2 days before the touching offences were committed. Her age was known to you.
- 2) Your contact with the victim began on Facebook, and then involved an exchange of hundreds of text messages, many of them sexually explicit, and culminated in an arrangement for the victim to visit your room at Lookout Lodge on 9 May 2011. You facilitated her covert entry to the premises, from which she was prohibited by reason of age.
- 3) In your room, you engaged in sexual contact with her, including penetrating her anus and vagina with your finger, and penetrating her mouth with your penis; you ejaculated in her mouth and she swallowed the semen.
- 4) Following this incident there were no further meetings between you, although it appears that you did suggest further meetings, despite also saying you wanted it to end.
- 5) You told the victim to keep your relationship a secret, but it was disclosed, and this led to a police investigation.
- 6) Interviewed by the police, you said you had decided to have sex with the victim before she arrived at your room; you were excited by the illegality, and the risk of being caught; afterwards you said you regretted it, but because of concerns for your own reputation, not for the effect upon the victim, whom you described as “wanting it”, and you referred to yourself as “not her first victim”.
- 7) I have read the pre-sentence report. In it, there is no mention of genuine remorse or victim empathy; you appear to be trying to cast yourself as the victim of this situation, and even suggest that you can justify your actions by blaming the victim.
- 8) I consider that this attitude justifies the assessment by the author of the pre-sentence report that you are at risk of re-offending, and I put that risk at medium

to high. Unless you respond to rehabilitation by modifying your attitude to your behaviour and your victim, that assessment will remain, and is a matter which should be taken into account in any consideration of your early release from custody.

- 9) Although you have a number of previous convictions, these are of types unrelated to the present offences, and appear to have been influenced by alcohol in most cases, whereas there is no evidence of intoxication when these offences were committed. I do not aggravate your punishment by reference to those previous convictions.
- 10) I turn to the question of sentencing for these offences. I have referred to the guidelines issued by the Sentencing Guidelines Council.
- 11) In assessing the seriousness of the offences, I consider the harm caused to the victim, the level of your culpability, and the level of risk you pose to society.
- 12) The physical harm to the victim is apparent from the facts of the offences; the psychological harm is less obvious from the evidence before me, and may only appear with the passage of time.
- 13) The level of your culpability is high; you seduced a girl you knew to be just 15 years old to participate in sexual activity whose only motivation appears to have been your own sexual gratification, and the knowledge of her age only added to the excitement for you. The disparity in your ages goes to aggravate the culpability.
- 14) The level of risk you pose to society is high, because of your assertion that what you did was not your fault, and that the victim “wanted it”. You are unable to recognise that it is wrong to engage in sexual activity with a child.
- 15) These factors combine to make these offences so serious that only sentences of immediate custody are appropriate punishment for them, as I have already indicated to you.
- 16) I find that all of the offences are aggravated by the vulnerability of the victim, not only by reason of her age, but also because she was willing to allow herself to become involved in a relationship with a man more than 23 years her senior, and to allow it to become sexual. If, as you suggested to the police, this had happened to her before, I trust that the Social Services Team has taken action to protect her from further harm.

Sexual Grooming (s.15)

- 17) The range of sentences for this offence is 1-4 years imprisonment. In view of the aggravating factors I have mentioned, and the lack of offence mitigation, I consider the appropriate starting point is 2 years imprisonment.

Sexual touching (s.9)

18) The range of sentences for these offences is 3-7 years imprisonment. In addition to the aggravating features I have already mentioned, the offence of penetration of the victim's mouth by your penis is further aggravated by your ejaculation in her mouth. Once again there is no offence mitigation for any of these offences. I consider that the appropriate starting point for the penile penetration of the mouth is 4 ½ years imprisonment, and for the other two offences of digital penetration it is 4 years imprisonment.

19) You pleaded guilty to these offences. For the sexual touching offences, to which you pleaded guilty at the first opportunity, you will receive the full deduction of 1/3 of your sentences. However, for the grooming offence you pleaded not guilty at first, and only changed your plea when the new charges were put; therefore you will receive ¼ deduction from your sentence for that offence.

20) I consider that the sentences for the touching offences should be concurrent with each other, as they were all committed on the same occasion; however, they will be consecutive to the sentence for the grooming offence, which was committed earlier.

21) You are therefore sentenced as follows:

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| 1. | Sexual grooming | 18 months imprisonment |
| 2. | Sexual touching (penis) | 36 months imprisonment consecutive to 1 |
| 3. | Sexual touching (vagina) | 32 months imprisonment consecutive to 1 but concurrent to 2 |
| 4. | Sexual touching (anus) | 32 months imprisonment consecutive to 1 but concurrent to 2 |

22) The total sentence is 54 months imprisonment. The time you have spent on remand awaiting sentence will count towards that total sentence.

23) During your sentence, I recommend that you receive such sex offender rehabilitation treatment as is available from the Social Services Team, and that any consideration of early release should have regard to the nature and quality of that treatment, and the nature and extent of your response thereto.

24) You will be subject to the Sex Offender Notification requirements in s.80 SOA 2003 for an indefinite period.

18th October 2011

Carl Gumsley
Senior Magistrate