
AUSTRALIA / JUDGMENT

R v Biggart

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District Court

New South Wales

Medium Neutral Citation:

R v Biggart [2026] NSWDC 353

Hearing dates:

27 August 2026

Date of orders:

25 September 2026

Decision date:

25 September 2026

Jurisdiction:

Criminal

Before:

Mahony SC DCJ

Decision:

Full-time imprisonment. For orders see [112]-[118]

Catchwords:

SENTENCE – Maintain unlawful sexual relationship with child – s66EA of the Crimes Act 1900

Legislation Cited:

Child Protection (Offender's Registration) Act 2000 (NSW)

Crimes Act 1900 (NSW)

Crimes (Sentencing Procedure) Act 1999 (NSW)

Criminal Procedure Act 1986 (NSW)

Cases Cited:

Bugmy v The Queen (2013) 249 CLR 571; [2013] HCA 27

Burr v R [2020] NSWCCA 282

MK v R [2024] NSWCCA 127

R v Fisher [2024] NSWCCA 191

R v Lamey [2025] NSWCCA 17

R v LPCM [2025] NSWCCA 78

RA v R [2024] NSWCCA 149

Xerri v The King (2024) 278 CLR 276; [2024] HCA 5

YA v R [2026] NSWCCA 38

Category:

Sentence

Parties:

Office of the Director of Public Prosecutions (NSW) (the Crown)

Anthony Biggart (the offender)

Representation:

Counsel:

Ms S Coombes (the Crown)

Ms B Kennedy (the offender)

Solicitors:

Ms V Wishalim (the Crown)

Ms E Arslan (the offender)

File Number(s):

2023/264041

Publication restriction:

Pursuant to s15A of the Children's (Criminal Proceedings) Act 1987 (NSW) and s578A of the Crimes Act 1900 (NSW), publication of the name of, or any matter which could identify the victim is prohibited

remarks on sentence

The offender is to be sentenced for an offence of adult maintain unlawful relationship with child. He pleaded guilty to Count 1 on an ex-officio Indictment as follows:-

“Count 1 – Between 29 April 2016 and 8 December 2017, at Blaxlands Ridge and elsewhere in the state of New South Wales, did maintain an unlawful sexual relationship with WH, then a child under 16 years of age, namely 13 and 14 years old, in which the said Anthony Biggart engaged in the following two or more unlawful sexual acts:

- a. Digitally penetrating the complainant’s vagina;
- b. Performing cunnilingus on the complainant;
- c. Inserting his penis into the complainant’s mouth;
- d. Having penile-vaginal intercourse with the complainant;
- e. Sending the complainant a photograph of his penis.”

This is an offence pursuant to ss6EA(1) of the Crimes Act 1900 (NSW) (“the Crimes Act”). The maximum penalty is life imprisonment, and there is no standard non-parole period prescribed.

On a Certificate pursuant to s166 of the Criminal Procedure Act 1986 (NSW) is a related offence of hinder/resist police officer in the execution of their duty. This is an offence pursuant to s60A(1AA) of the Crimes Act and has a maximum penalty of 12 months imprisonment and/or a fine of 20 penalty units.

The offender has been in custody for a total of 909 days awaiting sentence. That period was broken when he was granted conditional bail on 16 May 2025 and released from custody on 19 May 2025 until his bail was revoked on 1 January 2026.

The sentence hearing

The sentence hearing took place on 27 August 2026. The Crown Sentence Summary became Exhibit A and it included the statement of agreed facts which may be summarised as follows. The victim was born DM on 28 March 2003 and formally changed her name to WH on 30 September 2022. During the period 29 April 2016 to 8 December 2017, she resided with her mother KM at premises in Blaxlands Ridge.

During that period the offender was in a de-facto relationship and had a daughter born in 2012. He resided at Glossodia with his partner and her three children from a previous relationship.

The offender had met the victim’s mother in about 2011. She had offered the offender a room at her residence and she introduced the offender to her friend, who became the offender’s de-facto partner. He moved in with her some months later.

The victim and the offender saw each other often and the victim called the offender “Uncle Tony”. During the time of the offending the victim was 13 and 14 years of age and the offender, who was born in 1987, was aged 29 and 30 years.

The victim's mother owned a property where there was a caravan. At times during the offending period, the victim would sleep in the caravan instead of her bedroom in the house. The victim and the offender would spend time together both in the main house and in the caravan.

The agreed facts set out 14 separate incidents during which the offender committed 20 sexual offences. These may be summarised as follows:-

Incident 1

On a date in May 2016, the victim was at the offender's home while his de-facto partner was present. The offender was play-fighting with the victim and pushed her to a couch. He kissed the victim and fell down on her. He kissed the victim and held her stomach and then put his hands down her pants and put his finger in her vagina. The victim asked the offender's de-facto partner to take her home.

Incident 2

Around June 2016, the victim's mother attended court in response to a Court Attendance Notice. The offender came to the victim's home whilst her mother was at court and they were again play-fighting with each other. The offender kissed the victim and again placed his hands down her pants and put his finger into her vagina.

Incident 3

On 25 November 2016, the victim's mother was again at court and the offender was at the victim's house. The offender and victim were in the victim's bedroom and on her bed where he kissed the victim and had penile-vaginal sexual intercourse with her before her mother returned home.

Incident 4

Towards the end of August 2016, the victim and the offender were at the victim's home watching videos from a YouTube channel whilst on the victim's bed. The offender placed his hand on the victim's leg and then had penile-vaginal sexual intercourse with her for about 20 minutes. This incident ended when the offender heard a car. He got dressed and walked out of the room. When he returned, he said to the victim, "Oh, it wasn't your mum" and asked, "Do you want to keep going?" to which the victim responded that she did not.

Incident 5

In December 2016 or January 2017 the victim snuck out of her house and walked to a street adjacent to the property to meet the offender. The offender gave her a bottle of alcoholic Midori and drove the victim to council bushland nearby. The offender took the victim out of the car and started kissing her. He then placed her on the bonnet of the car, pulled his own pants down and pulled the victim's underwear off and thereafter had penile-vaginal sexual intercourse with her.

Incident 6

In January 2017, the victim was at her home with the offender. While the victim was taking a shower, the offender entered the shower and inserted his penis into her mouth.

The agreed facts relate as context that on a date in April 2017, on an occasion when the offender arrived at the victim's home, he hugged the victim and then turned around to see if anyone could see them, and having done so he kissed the victim.

Incident 7

On a night in April 2017, the victim's neighbour was staying with her in the caravan on the property where the victim lived. The victim snuck out to meet the offender on a nearby street. The offender parked his car and told the victim to get into the backseat. He then proceeded to undress the victim and started to insert his fingers into her vagina. This continued for 10 to 12 minutes. He then had penile-vaginal sexual intercourse with the victim and ejaculated inside her vagina. She returned to the caravan later that night.

Incident 8

About two days later in April 2017, the offender called the victim and told her to meet him down the road from her home. The victim met the offender in his car and whilst in the car the offender inserted his finger into the victim's vagina.

Incident 9

In August 2017, the offender went to the victim's home. The victim's mother and partner were in the home and the offender was sitting on a couch next to the victim under a blanket. He proceeded to insert a finger into her vagina while they were positioned so it looked like both of them were looking at the victim's phone. At about 5:00 a.m. the next morning the victim was in her bed in the caravan. The offender went to the caravan and they had penile-vaginal sexual intercourse for about 20 minutes until the offender ejaculated inside the victim.

Incident 10

On 14 October 2017, the victim snuck out of the house at about 11:00 p.m. and met the offender down the road from her residence. The offender drove the victim to an industrial area where they sat and talked in the car. At some point the offender put his hands down the victim's pants, pulled them down and started licking her vagina. Thereafter he picked the victim up and put her on the ground and they had penile-vaginal sexual intercourse during which the offender ejaculated inside the victim. The offender drove the victim back and she arrived home before 1:30 a.m.

The agreed facts set out a number of communications exchanged between the victim and offender, including an SMS exchange on 13 November 2017 which included emojis indicating cunnilingus.

Incident 11

On 14 November 2017, further messages were exchanged of a sexualised nature between the offender and victim. They continued to send messages on 20 November 2017 and the offender sent the victim a picture of his penis.

Incident 12

On 24 November 2017, the victim sent the offender a message requesting that he take her swimming. The offender took the victim to the Colo River and before she went swimming, kissed the victim and inserted his fingers into her vagina. Afterwards the offender dropped the victim home.

Incident 13

On 25 November 2017, the victim and the offender were at the victim's home and both took a shower. Afterwards they lay in the victim's mother's bed. The offender inserted his fingers into the victim's vagina. They both went back into the shower where the offender picked the victim up and inserted his penis into the victim's vagina. They then moved back to the victim's mother's bed and had penile-vaginal sexual intercourse again.

The agreed facts set out messages exchanged between the victim and offender on 1, 3 and 4 December 2017.

Incident 14

On 7 December 2017, the offender picked the victim up from her home at about 4:00 a.m. and took her to his home. The victim told the offender that she wanted to have sex and they went to a shed that was separate to the house where there was a bed. They had penile-vaginal sexual intercourse following which the victim fell asleep in the bed next to the offender. The agreed facts then set out numerous messages exchanged between the victim and the offender later that day. Some of the messages were of a sexualised nature, and they also included the victim sending the following message, "I don't wanna get u caught texting me" (sic).

Paragraph [65] of the agreed facts states, "These incidents reflect an ongoing unlawful sexual relationship between the offender and the victim over the offending period and were not isolated events."

The agreed facts also set out the circumstances of the offender's arrest on 18 August 2023. When the police officers attended at premises in Blacktown to arrest the offender, he ran out of the rear door of the property into a neighbouring property but was apprehended by police. This was the basis of the related offence of hinder police in the execution of their duty on the s166 Certificate.

Exhibit A also included the criminal antecedents of the offender. They mainly concerned traffic offences from the Children's Court in 2004, but included his convictions on 29 May 2009 of the offences of dangerous driving occasioning death-drive in manner dangerous for which he was

sentenced to imprisonment for 3 years and 6 months with a non-parole period of 1 year and 6 months commencing on 27 August 2009, and an offence of dangerous driving occasioning grievous bodily harm-drive in manner dangerous, for which he was sentenced to 3 years imprisonment with a non-parole period of 2 years commencing 27 February 2009.

Exhibit A also included the offender's custodial history. Relevantly, whilst on remand he had one infraction in December 2023 of disobeying a direction.

Exhibit B was the Crown Bundle concerning the registration of the offender pursuant to the Child Protection (Offenders Registration) Act 2000 (NSW) which was not in issue.

Exhibit C was a Victim Impact Statement ("VIS") of WH which she read in court. The VIS is referred to below.

The offender's evidence

The offender relied on a bundle of subjective material which became Exhibit 1. Exhibit 1.1 was a report by forensic psychologist, Mr Patrick Sheehan dated 31 July 2026. Mr Sheehan assessed the offender on 29 July 2026 via audio-visual link and was qualified with the agreed facts and the offender's NSW criminal history. He interviewed the offender for over 2 hours and took a family and development history. That included the offender's report of a troubled homelife. At the age of 5 to 6 years, the offender's parents separated and he continued to live with his mother who was a heavy cannabis smoker. He reported persistent violence in the home, both between his mother and her partner and that he was subject to violence from both his mother and her partner being left with bruises and welts that ultimately were detected at school, triggering DOCS involvement.

The offender went to live with his father when he was aged 7-8 years and remained in the care of his father for the remainder of his development. He was close to his father however, he reported being engaged in delinquency and risk-taking behaviours during his teenage years.

The offender reported that he had a disrupted schooling, changing schools on 7 occasions. He had persistent problems with inattention and impulsive behaviour but was never diagnosed with Attention Deficient Hyperactivity Disorder (ADHD). He left school in year 9 aged 14 years and 9 months and subsequently completed a range of occupational training certificates through TAFE. He reported a reasonable work ethic and had been in employment consistently. Between 2017 and 2023, he worked doing bakery deliveries and in 2025 whilst on bail, he worked for a mechanic business.

Mr Sheehan took a relationship history from the offender who regarded himself primarily heterosexual. He had described precocious sexual development and he acknowledged having had a sexual interest in the victim when she was 13 years of age but denied ever having been sexually interested in other similarly aged children he had encountered in the community.

The offender reported never having had an interest in abusing drugs until he was in his early 30s, however the index offending was not linked in any way to substance abuse.

Mr Sheehan opined that notwithstanding his exposure to significant violence in the home during his early development, he had no symptoms in keeping with Post-Traumatic Stress Disorder (PTSD) and did not report a history of symptoms in keeping with a major depressive disorder.

The author noted that the offender had been exposed to a traumatic event in 2007, when he was aged 20 years. He had a serious motor vehicle accident in which his close friend who was a passenger was killed and he was convicted of dangerous driving occasioning death. He had been troubled by traumatic memories of the event and struggled with guilt regarding the death of his friend ever since. Whilst he had been diagnosed with PTSD following that matter, he no longer has symptoms of it.

Mr Sheehan opined that the offender meets the criteria for substance use disorder (mild, in early remission in a controlled environment) and that he technically meets diagnostic criteria for paedophilic disorder (non-exclusive type, interest in girls), however he expressed some caution in applying that diagnosis to this offender given that the disorder “captures a fixed sexual interest in a premature sexual somatotype (a child’s body with no secondary sexual characteristics) which does not appear to apply to this offender.”

The offender acknowledged his offending behaviour and the harm done to the victim of the index offence to Mr Sheehan.

Mr Sheehan opined that the offender reported early disadvantage of a kind recognised in the Bugmy Bar Book, but that it was not possible to determine categorically to what extent his onset of impulsivity was influenced by his early adversity. He further opined, “Despite his relatively solid work history and lack of criminal versatility, the offender’s impulsive decision-making has continued to create problems for him throughout the life course”. He further opined that the offender shows only a limited understanding of the internal processes through which he came to permit himself to engage in the index offending.

Mr Sheehan assessed the offender’s risk of re-offending to be in the average range using the Static-99R tool. Overall, he assessed the offender’s risk of re-offending as moderate or medium relative to other sex offenders. He further opined that it was unlikely the offender would be offered sex offender treatment programs whilst in custody because those programs are offered only to offenders who are assessed as moderate-high risk (needs). Other programs such as the EQUIPS suite of programs were widely available in the community and he recommended that a GP mental health care plan be implemented upon his release to allow the offender to work on improving his self-regulation.

Exhibit 1.2 is a letter from the offender to the Court dated 17 August 2026. It was a lengthy document comprising 6 pages, in which the offender acknowledged the harm that he caused to the victim and his sorrowful remorse for causing her irreparable harm. He further takes full responsibility for his offending and the serious impact on the victim. The offender outlined his childhood disadvantage following his parent’s divorce and his exposure to domestic violence towards his mother and himself and his siblings.

The offender outlined his fractured relationship with his mother and his close relationship with his grandmother following moving in with his father. He also outlined his struggles at school, which included severe bullying, and the trauma resulting from the motor vehicle accident in which his friend was killed.

The offender also provided details of his relationship with his ex-partner and their daughter and their financial hardships. It was during that relationship that he stated, “I made the horrible decision to engage in an unlawful relationship with W. Looking back at my actions, I am disgusted with myself for what I did to W and the way in which I betrayed my partner and daughter”.

The offender stated that he feels ashamed of himself on a daily basis and genuinely hopes that the victim is able to heal from the harm that he caused her.

The offender also outlined the difficulties he has faced in custody, particularly in maintaining a relationship with his daughter, who is unaware that he is in custody. He described his time in custody as “incredibly lonely and difficult” and described numerous assaults that he had witnessed in custody.

The offender stated that he is in a Special Management Area Placement (SMAP) and has had only 3 visits from his ex-partner.

The offender referred to the onerous conditions caused by constant lock-ins since he was arrested in 2023 and his inability to work or qualify for courses during his remand in custody. He provided a list of the numerous lock-in days between January 2025 and August 2026. In conclusion the offender stated, “I am so unbelievably sorry for what I have done, and for the harm and distress I have caused. I accept full responsibility for the course of my conduct for which I am before this court”.

Exhibit 1.3 is a letter from the offender’s ex-partner dated 19 August 2026. She writes that she has primarily supported him since he was charged so he could maintain a relationship with their daughter. She states that she is comforted that the offender is remorseful for his actions and has told her countless times that he regrets what has happened.

The author set out in detail difficulties their daughter has encountered without her father’s support. She has been diagnosed with ADHD, separation anxiety and chronic adjustment disorder. The author has also set out her own difficulties as a single mother, with four children, who has mobility issues. She reported that she has recently learned that their daughter has been self-harming. She further stated that the decision not to tell her about the offender’s charges was made because it was believed that doing so may exacerbate her mental health problems. This has contributed to the author struggling with her own mental health. In conclusion, she has asked the Court to consider the offender’s remorse and regret, as well as the burden his incarceration has placed on her and their daughter.

Exhibit 1.4 is a report from Dr M Malakar dated 19 July 2026 setting out the offender's daughter's mental health and physical health issues.

Exhibit 1.5 comprises JIRS sentencing statistics for the offence.

Exhibit 2 was a letter from the offender's father, Tom Biggart dated 18 August 2026. The author is 70 years of age and has retired. He set out the family history and the impact on the offender of his exposure to drug abuse and domestic violence as a young child when he was first separated from the offender's mother. He eventually reported the treatment of the offender and his sibling to DOCS and he cared for them both since then. He stated that the offender formed a close relationship with his grandmother who assisted in looking after the children.

Mr Biggart also set out the offender's educational history. At about 15 years of age he became rebellious and fell in with the wrong crowd. He left school at 14 years and 9 months and did a few TAFE courses before working with his father as a traffic controller.

Mr Biggart rehearsed the impact of the car accident in 2007 in which the offender was driving a motor vehicle that resulted in the death of his close friend. He stated that the offender is still distraught about losing his friend and ruminates over the accident.

Mr Biggart also writes that the offender is fiercely protective of his daughter and has an amicable relationship with his ex-partner. He states that it is devastating that the offender will miss out on seeing his daughter grow up. He further states that the offender's incarceration has been hard on his mental health and whilst he receives the occasional phone call, he feels lonely and isolated as the offender was one of his main support systems. Mr Biggart states that he is struggling to come to terms with the fact that his son committed "these shocking offences" and is devastated that he may not see his son anytime soon and hopes that he will still be alive when the offender is released.

The Crown submissions

The Crown relied on a thorough and detailed written outline of submissions in which it set out well-established principles of sentencing which are not controversial.

The Crown noted that s66EA of the Crimes Act had been amended in 2018. The offending in this case occurred before the amendment, and thus the maximum penalties that apply to the individual acts relied on by the Crown at the time are relevant to the sentencing exercise – see *Xerri v The King* (2024) 278 CLR 276; [2024] HCA 5.

The Crown referred to the non-exhaustive list of features relevant to the assessment of objective seriousness of an offence pursuant to s66EA identified in *RA v R* [2024] NSWCCA 149 at [101]-[102] as follows:-

Length of the period over which the unlawful sexual relationship was maintained;

The nature of the relationship in which the unlawful sexual acts were committed, such as a parental relationship, or that between a coach and player;

Whether the relationship placed the offender in a position of authority over or trust;

The age of the child at the commencement, and during the period, of the unlawful sexual relationship, and how far below 16 years of age the child was;

The age differential between offender and child;

The extent of the commission of unlawful sexual acts against the child above the statutory threshold of two;

The frequency with which unlawful sexual acts were committed during the period; and

For offending spanning the 2018 amendments, the maximum penalties applicable to the particular unlawful sexual acts committed within the period of the relationship.

The Crown also referred to the following sentencing authorities:-

R v Fisher [2024] NSWCCA 191, where the Court held that s66EA(1) offences involve consideration of all of the offender's conduct established by the victim's evidence, not merely the "ingredient" offences.

MK v R [2024] NSWCCA 127, where the Court rejected the applicant's contention that the sentencing judge should have identified specific occasions on which the applicant committed offences and treated those occasions as representative of a wider course of conduct.

R v Lamey [2025] NSWCCA 17, where the Court held that a trial Judge had erred by "taking the view that he was required to sentence the respondent only the basis of the particular incidents" of which he could satisfied beyond reasonable doubt.

R v LPCM [2025] NSWCCA 78, where the Court distinguished the previous s66EA(1) offence and confirmed, as held in R v Fisher, that sentencing for the offence involves sentencing an offender for maintain a relationship with the particular quality of being an unlawful sexual relationship with a child – see RA v R [2024] NSWCCA 149 at [161] per Dhanji J.

The Crown submitted that in assessing the objective seriousness, the gravamen of the offence can be found in the repetitive and persistent nature of the unlawful sexual relationship, rather than proof of a particular number of individual sexual offences. Here, there were 20 unlawful sexual acts described within the agreed facts, captured within 14 incidents of offending. Those 20 unlawful sexual acts included:-

Digital penetration child 10-14 on 2 occasions

Penile penetration vagina child 10-14 on 3 occasions

Fellatio child 10-14 on 1 occasion

Digital penetration vagina child 14-16 on 5 occasions

Penile penetration vagina child 14-16 on 7 occasions

Cunnilingus child 14-16 on 1 occasion

Act of indecency child under 16 on 1 occasion

The Crown submitted the following features were also relevant to the assessment of objective seriousness:-

The offending period spanned across approximately 19 months from 29 April 2016 and 8 December 2017.

The victim was 13 when the unlawful sexual relationship commenced, and it was maintained until she was 14 years. She was therefore 2-3 years less than age 16;

Breach of trust, being a close family friend for a number of years;

Age disparity – the offender was 28-30 years at the relevant time, the victim was 13-14 years;

A number of unlawful sexual acts during the course of the unlawful sexual relationship, 14 in total varying in their nature;

The frequency of the unlawful sexual acts varied at different stages throughout the unlawful sexual relationship from approximately monthly at the beginning, with approximately 3 months lapsing between unlawful sexual acts commencing with 3 occasions occurring between November 2016 and January 2017. The victim is 13 years old at the time of these unlawful sexual acts. The victim turns 14 on 28 March 2017. The next unlawful sexual act occurs in April 2016, the next in August 2017. Following this the frequency of unlawful sexual acts increases from 13 October 2017 to being regular and within days at varying times; and

Penile vaginal penetration was unprotected.

The Crown submitted that the following were aggravating features pursuant to s21A(2) of the Crimes (Sentencing Procedure) Act 1999 (NSW) (“the CSPA”):-

Incidents 2, 3, 4, 6, 9 and 13 were committed in the family home of the victim (s21A(2)(eb); Incidents 1 and 14 were committed in the offender’s home.

The victim was vulnerable in incidents 5 and 10 because of the geographical isolation/general isolation of the victim (s21A(2)(l)).

The Crown submitted that the emotional harm to the victim as evidenced by her VIS was significant given the breach of trust involved in that the offender was a family friend who the victim saw often and called “Uncle Tony”. The offender exploited that trust over a 19 month period when the victim was 13 and 14 years old. The Crown submitted his moral culpability was high given his age and the abuse of power imbalance that arose from being a trusted family friend.

The Crown referred to the offender’s prior criminal history and prior custodial sentence. With respect to his childhood disadvantage, the Crown noted he had been exposed to domestic violence for approximately 1 to 2 years when he was aged between 5 and 7. Once DOCS became involved and he was placed with his biological father, the offender enjoyed a stable childhood without exposure to violence and drug abuse. The Crown submitted that any consideration of the *Bugmy v The Queen* (2013) 249 CLR 571; [2013] HCA 27 principles should be weighted accordingly, noting there was no finding of PTSD following his exposure to domestic violence as a child.

The Crown noted the opinion of Mr Sheehan, that the offender met the criteria for substance use disorder (mild, in early remission in a controlled environment) and paedophilic disorder and submitted that the matters are relevant to the Court’s assessment of risk of recidivism and prospects of rehabilitation. It noted that in Mr Sheehan’s opinion the offender’s risk of re-offending is moderate when compared to other sex offenders.

The Crown conceded that the offender is remorseful and has demonstrated some insight into the impact of his offending, acknowledging his actions may have affected the victim’s emotional, mental and physical well-being. The Crown accepted that the Court may take into account his expressed remorse and acknowledgement of harm to the victim as a mitigating factor pursuant to s21A(3)(i).

The Crown submitted that pursuant to s25AA(3) of the CSPA the Court must have regard to the trauma of sexual abuse on children as understood at the time of sentencing and the Court must sentence an offender in accordance with sentencing patterns and practices at the time of sentencing.

The Crown noted the limitations on the use of statistics and comparable cases which may be referred to for the distillation of sentencing principles and a range of sentencing options.

The Crown acknowledged that a finding of special circumstances may be made given the offender’s circumstances but submitted the Court was not obliged to vary the statutory ratio between head sentence and non-parole period. The Crown submitted the only appropriate penalty in this case is a sentence of full-time imprisonment.

In her oral submissions, the Crown noted that the VIS read by the victim in Court spoke to the impact of the offending on her including the significant breach of trust involved and the complexity of her processing the experiences, for example, that she still calls the offender “Uncle Tony” which she finds “confusing, painful and exhausting.”

The Crown rehearsed her submissions regarding the assessment of objective seriousness referring to RA v R and highlighted the repetitive and persistent nature of the offending here.

The Crown rehearsed her submissions regarding the importance of general deterrence and that specific deterrence had some work to do. The Crown submitted it was clearly serious offending with a maximum penalty of life imprisonment and rehearsed the aggravating features outlined above. Finally, the Crown rehearsed the submission that the offender's moral culpability for the offending was high given the age difference, his abuse of power and that he was a trusted family friend.

Submissions for the offender

Counsel for the offender also relied on a detailed written outline of submissions in which she conceded from the outset that, having regard to all of the circumstances of the case, no sentence other than full-time imprisonment was appropriate. The submissions noted that the maximum penalty prescribed is life imprisonment, however each of the unlawful sexual acts occurred prior to the enactment of the current s66EA, and as such the Court must take into consideration the maximum penalties applicable to the unlawful sexual acts at the time they occurred. Each would, at the relevant time, have been an offence of aggravated sexual assault contrary to the then s61J of the Crimes Act 1900, which carried a maximum penalty of 20 years imprisonment.

In assessing the objective seriousness of the offence, counsel referred to the factors identified in Burr v R [2020] NSWCCA 282 at [106].

Counsel analysed the 14 separate incidents of sexual misconduct which occurred over a period of approximately 18 months as follows.

Incidents 1, 2 and 4 occurred in May, June and August 2016, approximately monthly. There was then a break of approximately three months before incidents 3, 5 and 6, which occurred between late November 2016 and January 2017. All of those incidents occurred when the victim was 13 years of age. There was then a break of approximately three months during which the victim turned 14. Incident 7 and 8 occurred within days of one another in April 2017 and followed by a break of approximately four months before incident 9 occurred in August 2017. From mid-October 2017 until December 2017, the frequency of sexual misconduct, including text messages, increased significantly. That is when incidents 10 to 14 occurred.

Counsel noted that the offender had been in custody for a period of 880 days as at the date of sentence hearing. Further, between 19 May 2025 and 25 September 2025 the offender was subject to the following onerous bail conditions:-

Home detention, prohibiting him from leaving home unless in the company of his mother or step-father; attending court or conferences with his legal representatives; or to receive emergency medical treatment;

Abstention from alcohol and a prohibition on entering any licensed premises, except a restaurant and then only in the company of his mother or step-father;

A prohibition on contact with children (including his own) unless in the immediate company of his mother or step-father;

Enforcement conditions for both of the above; and

Restrictions on his possession and use of internet-enabled devices.

The conditions were in place for a total of 129 days and counsel submitted that period amounted to a period of quasi-custody. Counsel noted the offender was entitled to a utilitarian discount of 25% for his early plea of guilty to the ex-officio Indictment.

Counsel conceded the fact that incidents 1 and 14 occurred in the offender's home and incidents 2, 3, 4, 6, 9 and 13 occurred in the victim's home constituted aggravating factors pursuant to s21A of the CSPA.

Counsel summarised the purposes of sentencing in s3A of the CSPA and noted the offender's background of deprivation, which in the opinion of Mr Sheehan contributed to his impulsivity, poor educational outcomes and insight and offending behaviour. Counsel noted that an offender's moral culpability may be reduced when they have suffered deprivation or disadvantage in childhood and that may consequently reduce the weight attributable to punishment, specific and general deterrence. Given the need for rehabilitation, his prospects were likely to be improved with psychological therapy, drug and alcohol treatment and offence-focused supervision in the community and therefore a finding of special circumstances should be made. Counsel submitted that the purposes of sentencing will be best served by a sentence of imprisonment with a longer than usual parole period to assist the offender to re-integrate into the community. She noted that upon his conviction, the Court must make an order that the offender is a Registrable Person pursuant to s3C of the Child Protection (Offender's Registration) Act 2000 (NSW) ("CPORA").

Annexed to counsel's written outline was a summary of comparable cases, none of which fell on "all fours" with the offender's case.

In her oral submissions, counsel noted that there was no dispute as to the applicable sentencing principles, and that the s5 threshold had been crossed. Counsel conceded that the offending caused very significant harm, however the offender had expressed meaningful remorse and showed understanding and insight into the harm caused to the victim. Counsel submitted there was no significant risk of recidivism and conceded that the order to be made under the CPORA would be for a period of 15 years following his release from custody. Counsel rehearsed her submissions relating to the offender's time in custody and in respect of a finding of quasi-custody based on his onerous bail conditions enduring for a period 129 days.

Counsel referred to the offender's letter of apology to the Court which outlined his hardship in custody, the fear and anxiety he experienced as well as the challenges he faced in his life which gave rise to the Bugmy principles being applicable. Counsel submitted that in applying principles of totality, a finding of special circumstances should be made so as to adjust the non-parole period to provide the offender access to programs in the community to assist in his reintegration as he would not have access to rehabilitative programs whilst in custody.

In a submission in reply, the Crown noted there was no issue concerning a finding of special circumstances and that the offender had been granted bail on 16 May 2025 but was not released until 19 May 2025 and was on conditions including home detention for a period of 9 months.

In respect of the Bugmy principles, the Crown noted that the extent of the offender's disadvantage comprised a period of 1-2 years where he was living with his mother and aged between 5 and 7 years, otherwise he had a childhood not marked by such disadvantage. Therefore, the applicability of the Bugmy principles should be given appropriate weight in sentencing.

Determination

Section 3A of the CSPA sets out the purposes of sentencing as follows:-

- (a) to ensure that the offender is adequately punished for the offence,
- (b) to prevent crime by deterring the offender and other persons from committing similar offences,
- (c) to protect the community from the offender,
- (d) to promote the rehabilitation of the offender,
- (e) to make the offender accountable for his or her actions,
- (f) to denounce the conduct of the offender,
- (g) to recognise the harm done to the victim of the crime and the community.

In assessing the gravity of the offending, I take into account the following matters adumbrated by Wilson J in *RA v R*:-

A period over which the unlawful sexual relationship was maintained was a period of 19 months.

The relationship of the offender was that he was a trusted friend of the victim's mother and as such he had easy access to the victim and acted in breach of that trust.

Whilst that relationship did not place the offender in a position of authority over the victim, he was in a position of trust towards her reflected in the fact that she referred to him as "Uncle Tony".

The victim was aged 13 years at the commencement and turned 14 during the period of the unlawful sexual relationship.

The age differential between the victim and the offender was approximately 15 years.

The unlawful sexual relationship was established by the commission of some 20 unlawful sexual acts against the child victim during 14 separate incidents over the period of 19 months.

As outlined above, the unlawful sexual acts occurred on a monthly basis although there were some breaks of up to three months. Towards the end of the period, the frequency of the unlawful sexual acts increased.

The unlawful sexual acts were all objectively serious sexual assaults involving sexual intercourse and at the time of the offences, would have constituted offences of aggravated sexual assault contrary to then s61J of the Crimes Act, which carried a maximum penalty of 20 years imprisonment.

The unlawful sexual acts during the period included numerous offences of digitally penetrating the victim's vagina, performing cunnilingus on the victim, having the victim perform fellatio on the offender, and a number of offences of penile-vaginal sexual intercourse ending in ejaculation inside the victim's vagina. The offender never used a condom, giving rise to the risk of pregnancy and sexually transmitted diseases.

Having regard to the position of trust that the offender abused, the nature and number of the unlawful sexual acts, the fact that they were not isolated leads to a conclusion that the offending fell well within the mid-range of objective seriousness for an offence pursuant to s66EA of the Crimes Act and at the upper end of that mid-range. I find the following aggravating factors applicable pursuant to s21A(2)(eb) of the CSPA:-

Incidents 2, 3, 4, 6, 9 and 13 occurred in the victim's home and incidents 1 and 14 occurred in the offender's home. These are aggravating factors because they were places where a vulnerable child should have been safe from the predatory conduct of the offender who was a trusted family friend.

General deterrence is paramount in sentencing for persistent and ongoing child sexual offending. A clear message must be sent, and continued to be sent, to like-minded persons in the community that Parliament has recognised the significant deleterious impact of sexual offending on children which may endure for their lifetime, has prescribed the lengthiest sentence available, namely life imprisonment as the maximum penalty, and that the Courts will impose condign punishment in appropriate cases. The maximum penalty of life imprisonment not only indicates the seriousness with which Parliament regards such criminal conduct but acts as a guide in the sentencing synthesis.

Specific deterrence also has a role to play in the sentencing synthesis and the offender must understand that if he were to re-offend, he would be subject to having a more severe penalty imposed.

Given that the unlawful relationship with the victim endured for a period over 19 months when the victim was 13 and 14 years of age, the offending constituted serious and reprehensible criminal conduct for which the offender was highly morally culpable. It is not in dispute that the threshold in s5 of the CSPA has been crossed, and no sentence other than imprisonment could be imposed on the offender.

Whilst the offender has no previous sexual offences in his criminal history, he has been convicted of a serious indictable offence and sentenced to a lengthy term of imprisonment as a result of the motor vehicle accident where his friend was killed. His criminal record, therefore, does not entitle him to any leniency in sentencing.

I have had regard to the VIS read by the victim in court. It was a profound exposition of the terrible psychological and emotional consequences of pernicious sexual offending on a child which has been long recognised by the courts as enduring for a victim's lifetime. In her own words, the victim detailed the impact of the offending on all aspects of her life and highlighted the complexity her processing of the serious breach of trust involved. An example of that was she still calls the offender "Uncle Tony", which she finds "confusing, painful and exhausting". I have therefore taken the VIS into account and given it full weight, but not so as to aggravate the objective seriousness of the offending.

There are significant subjective factors to be taken into account in sentencing the offender. I accept that the offender has expressed genuine remorse for his offending conduct and that he has demonstrated insight and understanding of the significant harm caused to the victim of his crime.

I accept the evidence, which was not challenged by the Crown, that for a period of about 2 years when he was aged from approximately 6 to 8 years, the offender was exposed to drug abuse by his mother and domestic violence perpetrated by his mother's partner on her, the offender and his younger brother. Once he came into the care of his father, at the age of approximately 8 years, he had a supportive family environment. Notwithstanding that, the offender changed schools on 7 occasions and had persistent problems with inattention and impulsive behaviour, which resulted in him engaging in delinquency and risk-taking behaviours during his teenage years. He left school in year 9, aged 14 years and 9 months and thereafter completed a range of occupational training certificates through TAFE. The offender also displayed a reasonable work ethic thereafter and had been consistently employed in skilled or semi-skilled occupations.

Notwithstanding the traumatic memories of the motor vehicle accident in which his friend was killed, and his guilt regarding that, I accept Mr Sheehan's opinion that he does not meet a diagnosis of PTSD, and whilst he meets the criteria for substance use disorder (mild, in early remission in a controlled environment) it did not contribute to the index offence. I also accept Mr Sheehan's opinion that whilst he technically meets diagnostic criteria for paedophilic disorder (non-exclusive type, interest in girls) that opinion is qualified by virtue of the fact that he was not found to have a fixed sexual interest in a premature sexual somatotype.

In Bugmy v The Queen (2013) 249 CLR 571; [2013] HCA 27, the High Court held as follows:-

1. The circumstances that an offender has been raised in a community surrounded by alcohol abuse and violence may mitigate the sentence because his/her moral culpability is likely to be less than the culpability of an offender whose formative years have not been marred in that way [40].
2. The effects of profound deprivation do not diminish over time and repeated offending and should be given full weight in determining the sentence in every case [42-44].
3. A background of that kind may leave a mark on a person throughout life and compromise a person's capacity to mature and learn from experience [43].

Whilst childhood disadvantage must be given full effect, I accept Mr Sheehan's opinion that it is not possible to determine categorically to what extent the offender's onset of impulsivity was influenced by his early childhood adversity. I also accept Mr Sheehan's opinion that the offender's impulsive decision making has continued to create problems for him throughout his life and that he shows only limited understanding of the internal processes through which he came to permit himself to engage in the index offending. Thus, whilst the principles in *Bugmy v The Queen* are engaged, only modest weight can be given to them in the sentencing synthesis.

I accept Mr Sheehan's opinion that the offender's risk of recidivism would be regarded as moderate or medium relative to other sex offenders and as such he will not qualify for rehabilitation programs in custody that are otherwise available in the community. Given the likelihood of a lengthy custodial sentence, his prospects of rehabilitation must be guarded until he can avail himself of appropriate treatment.

I accept that the offender will face an onerous time in protective custody and is unlikely to receive regular visitations. There is also an impact on his daughter and his aged father, however these are the inevitable consequences of his offending conduct and do not constitute exceptional circumstances so as to be taken into account in mitigation of the sentence to be imposed on him.

The offender has submitted that the Court exercise its discretion to make a finding of quasi-custody for a total of 129 days when the offender was subject to onerous bail conditions, including home detention. Recently, the Court of Criminal Appeal in *YA v R* [2026] NSWCCA 38 at [119] set out the following principles to be applied in exercising the Court's discretion to reduce a sentence on the basis of quasi-custody:-

"(1) The decision as to whether an offender's bail conditions are so "harsh or restrictive" that they may require a conclusion that at least some part of the period on bail should be treated as the notional equivalent of custody is reviewable only on a *House v The King* (1936) 55 CLR 499; [1936] HCA 40 basis.

- (2) Whether bail conditions amount to "quasi-custody" is a question of fact. The test is whether the finding was "reasonably open",

(3) Even if the sentencing judge is satisfied that the bail conditions amount to quasi-custody, there is no mandatory requirement for a sentencing judge to reflect that finding by way of backdating, and

(4) Factual findings in other decisions do not constitute binding authority."

(Authorities and citations omitted)

Notwithstanding that the bail conditions imposed on the offender following his first trial were onerous, they defined the conditions of his liberty for a relatively short period of time and were not so onerous as to warrant a finding of quasi-custody that would require back-dating of his sentence in all of the circumstances.

The offender is entitled to a 25% utilitarian discount on sentence for his plea of guilty.

I make a finding pursuant to s44 of the CSPA of special circumstances so as to extend the period of time on supervision following the offender's release from custody so as to allow him the opportunity to obtain treatment in the community and to re-integrate into the community.

I further note that the offender will be subject to registration as a registrable person pursuant to CPORA for a period of 15 years.

I intend to sentence the offender to a term of imprisonment of 15 years and to impose a non-parole period of 8 years imprisonment. The sentence will be backdated by 909 days from today.

Orders

You are convicted of the offence in Count 1 on the Indictment.

I sentence you to a term of imprisonment of 15 years.

I sentence you to a non-parole period of 8 years imprisonment to commence on 29 March 2024 and to expire on 28 March 2032.

The balance of term will be a period of 7 years to expire on 28 March 2039.

I further make a Registrable Person Order pursuant to the Child Protection (Offenders Registration) Act 2000 (NSW) for a period of 15 years following his release from custody.

I direct that, in compliance with s 3J(2) of that Act and Regulation 9 of the Child Protection (Offenders Registration) Regulation 2025, the offender be provided with a copy of this order and written notice of the reporting obligations, the consequences of failing to comply with such obligations and that the 15 year reporting period is to commence upon his release from custody by the Secretary of the Department of Communities and Justice. I have explained the Order to the offender.

In relation to the s166 related offence, you are convicted and I impose no further penalty pursuant to s10A of the Crimes (Sentencing Procedure) Act 1999.

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