

# Children's Court sentence appeals

From 1 January 2021

## Glossary:

conc	concurrent
cum	cumulative
ct	count
CRO	conditional release order
EFP	eligible for parole
imp	imprisonment
IYSO	intensive youth supervision order
NFP	no further punishment as per s 67 <i>Young Offenders Act</i>
PG	plead guilty
PSR	pre-sentence report
sex pen	sexual penetration
SRO	supervised release order
susp	suspended
TES	total effective sentence
TOI	trial of issues

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
2.	<p><i>ALC v The State of Western Australia</i></p> <p>[2022] WASCA 96</p> <p>Delivered 03/08//2022</p>	<p>16-17 yrs at time offending.</p> <p>Convicted after trial (cts 1 &amp; 5).</p> <p>Convicted after PG (cts 2-4; 6-9).</p> <p>Cts 2-4 (20% discount).</p> <p>Ct 6 (15% discount).</p> <p>Long criminal history; charged first sex offence aged 12 yrs; lengthy periods juvenile detention.</p> <p>Dysfunctional and tragic childhood; only child to teenage mother; father died aged 3 yrs; exposed to extreme levels of domestic violence and substance abuse from young age; very sexualised home environment; relinquished into State care aged 12 yrs; limited contact with mother from aged 17 yrs.</p> <p>Completed yr 10 in detention.</p> <p>Never employed; aspirations to gain trade qualification and undertake further studies.</p>	<p>Cts 1-6: Sex pen child 13-16 yrs.</p> <p>Cts 7 &amp; 8: Animal cruelty.</p> <p>Ct 9: Criminal damage.</p> <p>The victims, EH, JH and KP, were aged under 16 yrs at the time of the offending. At all times ALC was aware of the victims ages.</p> <p>All of the offences involved consensual sexual acts.</p> <p><u>Ct 1</u> The victim, EH, was 14 or 15 yrs of age. She and ALC knew each other. ALC and EH were both in State care.</p> <p>ALC and EH went into some bushes. ALC asked EH what position she wanted to do. She lay on the ground and removed her pants. ALC removed his pants and engaged in sexual intercourse with her.</p> <p><u>Cts 2-4</u> The victim, JH, was 14-15 yrs of age. Both ALC and JH were in State care.</p> <p>At a friend's house ALC and JH engaged in sexual intercourse.</p> <p>The following month ALC and JH again had sexual intercourse.</p> <p>On another occasion ALC and JH had sexual intercourse in ALC's bedroom at his group</p>	<p>Ct 1: 12 mths imp.</p> <p>Ct 2: 10 mths imp (cum).</p> <p>Ct 3: 10 mths imp (conc).</p> <p>Ct 4: 3 mths imp (cum).</p> <p>Ct 5: 15 mths imp (cum).</p> <p>Ct 6: 11 mths imp (conc).</p> <p>Ct 7: 2 mths imp (cum).</p> <p>Ct 8: 2 mths imp (conc).</p> <p>Ct 9: 1 mth;s imp (conc).</p> <p>TES 3 yrs 6 mths imp.</p> <p>EFP.</p> <p>At all times the appellant was a reportable offender under the <i>Community Protection (Offender Reporting) Act 2004</i> (WA) and, in respect of some of the offences, he was subject to a CRO in the Children's Court.</p> <p>The sentencing judge found a serious feature of the offending was that each of the victims were very vulnerable young girls and the appellant took advantage of their vulnerability.</p> <p>The sentencing judge</p>	<p>Dismissed (leave refused).</p> <p>Appeal concerned totality principle (individual sentences not challenged).</p> <p>At [58] With respect to the sex offending, although there was not a great disparity in the ages of the appellant and the complainants, it is clear that [he] knowingly took advantage of their vulnerability and exploited each of them purely for his sexual gratification. He did so in a callous and manipulative way. The victims were exposed to the risk of pregnancy. The appellant possesses no insight into his wrongdoing and has no empathy for his victims. In respect of JH and KP, he offended on more than one occasion. He was at all times a reportable offender and, at the time [he] committed some of the offences, he was on a CRO .... The offending can properly be viewed as being sustained and premediated.</p>

		<p>Diagnosed with ADHD aged 11 yrs; attachment disorder and PTSD.</p> <p>Long history of substance abuse; alcohol from aged 9 yrs; cannabis use aged 11 yrs and amphetamines from aged 14 yrs.</p>	<p>home. JH hid under his bed to avoid being discovered by the staff at the home.</p> <p><u>Cts 5 and 6</u> The victim, KP, had been in a relationship with ALC for a few days. At a fast-food restaurant they had sexual intercourse on the floor of a disabled toilet.</p> <p>On another occasion ALC and KP had sexual intercourse in a toilet block.</p> <p><u>Cts 7-9</u> ALC and others entered the grounds of a primary school. ALC used bolt cutters to gain entry to an area enclosing six chickens. Using a lighter and an aerosol can he deliberately set a chicken on fire and watched it burn before the chicken died. He then climbed up on the roof of a nearby building and deliberately threw a concrete block onto another chicken, killing it.</p> <p>The offence of criminal damage constituted the cutting of the wire around the area where the chickens were kept.</p>	<p>found the fact the appellant was the subject of a CRO at the time of the commission of some of the offences made the offending more serious.</p> <p>Lack of victim empathy, remorse and insight into his offending.</p>	<p>In our opinion, the sex offending engaged in by the appellant, while ... consensual, nevertheless involved a substantial degree of criminality.</p> <p>At [61] His Honour was correct to emphasise, in the present case, the sentencing objective of community protection, ... as his Honour found ... the appellant poses 'a substantial danger to young women'.</p> <p>At [63] ..., his Honour was correct to order the appellant to serve some of the individual sentences cum. This was necessary in order to reflect the fact that [he] committed offences against more than one complainant. Further, his Honour was correct to accumulate one of the sentences he imposed for the ill-treatment of animals. This was completely separate offending and involved a disturbing and cruel offence.</p>
1.	<i>DTN v The State of Western Australia</i>	16-17 yrs at time offending. 23 yrs at time sentencing.	3 x Sex pen child U13.  The female victim was aged 9 and 10 yrs at the	10 mths imp each cnt (conc).	Dismissed.  Appeal concerned type of

<p>[2021] WASCA 68</p> <p>Delivered 22/04/2021</p>	<p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Supportive family.</p> <p>Employed at time offending.</p> <p>No history of substance abuse or treatment needs.</p>	<p>time of the offending. She was related to DTN.</p> <p>The offending occurred in the course of two separate incidents.</p> <p>On the first occasion DTN penetrated the victim's vagina with his finger.</p> <p>On the second occasion DTN penetrated the victim's vagina with his finger. He then had sexual intercourse with her for a short period.</p>	<p>TES 10 mths imp.</p> <p>EFP.</p> <p>The trial judge found the offending aggravated by the degree of force involved; the offending was committed in the course of two discrete and separate incidents; involved a breach of trust arising from their relationship as second cousins; the significant age disparity in that the appellant was about 7 yrs older than the victim and he was on the verge of adulthood.</p> <p>The trial judge found the seriousness of the offending removed any possibility of susp or conditionally susp the sentence.</p> <p>Offending significant impact on victim, suffered from depression and suicidal for a substantial period; continues to experience difficulties with schooling and sleep.</p>	<p>sentence.</p> <p>At [137] In our opinion, the sentences of ... imp imposed ... were commensurate with the seriousness of the appellant's offending. Each of the offences was serious. His Honour ameliorated the sentences by ordering that the individual terms of immediate imp be served wholly conc, despite there having been an interval of about 12 mths between [each] incident.</p> <p>At [138] If the appellant had not been a child when he committed the offences and if he had not had good personal circ and antecedents, it would have been open to his Honour to have imposed significantly higher terms of immediate imp and to have ordered some accumulation of the individual sentences. ...</p> <p>At [140] ... his Honour did not err in being positively satisfied that it was not appropriate to susp or conditionally susp the</p>
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Office of the Director of Public Prosecutions