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TRANSCRIPT OF PROCEEDINGS

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DISTRICT COURT OF QUEENSLAND

CRIMINAL JURISDICTION

JUDGE SHANAHAN

Indictment No 2269 of 2016

THE QUEEN

v.

DEAN MATTHEW SALVALAI

BRISBANE

10.38 AM, TUESDAY, 14 FEBRUARY 2017

SENTENCE

Any Rulings that may be included in this transcript, may be extracted and subject to revision by the Presiding Judge.

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: Mr Salvalai, would you stand up, please. You have pleaded guilty to one offence of knowingly possessing child exploitation material. The dates between which that offence was committed was between the 4th of April 2005 and the 21st of December 2015. The offence came to light when a USB stick was discovered at your place of work. It was lying on the floor. It was opened, and child exploitation material was found. When all the workers had assembled, they were asked who owned it and you claimed it. The police were called, and you lost your employment immediately.

The police interviewed you, and you made full disclosures about your possession and access to this material. The USB stick was examined by the police and contained a total of 1358 unique images which could be classified as child exploitation material. An analysis of those images indicated 1183 fell within the category 1 level, 17 in category 2 and 158 in category 6 in relation to animated images. By far, the majority of the images fell within category 1, the lowest level on the Oliver Scale. They depicted, basically, prepubescent females, sometimes naked and sometimes in sexualised poses. There were no penetrative images.

In your admission to the police, you made full disclosures about starting to access this material when you were in grades 11 or 12. You continued to access it over a number of years, and you told the police that USB stick had been kept under your parent's and then under your own house and you had only recently discovered it. An examination of that USB stick by the police indicated the last access of the material on it was in 2011, so you told the truth to the police that you had stopped accessing this type of material.

You have pleaded guilty to the offence at an early stage. The offence began when you were a child, in law, of 16. It obviously continued for a number of years when you became an adult. It seems like you were accessing this material for about six years, but, again, that access only came to light through your own admissions. What has occurred in the meantime is that you have formed a relationship and married, and apparently turned your life around from earlier days. When I say that, the material before me indicates that you had a somewhat traumatic upbringing involving domestic violence between your own parents and an allegation of sexual abuse against yourself by an older girl. You had also descended into the use of cannabis in school and that continued for a number of years.

It is plain that your marriage and relationship has caused you to re-evaluate that rather dissolute lifestyle, and you have now moved on with your life. It seems to me, also, that I need to take into account that you have sought out treatment, which is ongoing, in relation to viewing of pornographic material including, presumably, the child exploitation material. I note from the psychologist report, your last counselling session was on the 3rd of February of this year, so that stands in your favour as well.

I have considered the comparable sentences placed before me. Whilst a jail sentence is open, it seems to me the circumstances here, particularly considering your

stopping access to this material of your own volition, places this in a different category. I am also of that view because of the nature of the material themselves. Although there are a substantial number of images, it is clear that they fall within the lowest category in terms of mistreatment of children. Thus, there are distinguishing features in relation to some of the matters place before me.

It seems to me, the case of Daw [2006] QCA 386 is closest to the circumstances here. Here, the offence is committed whilst you were a juvenile and continued whilst you were still a young man. The timeframe, as I have noted, has only come to light because of your own disclosures. What persuades me here to adopt an unusual course is the fact that you desisted from accessing this material of your own volition, the impact that the discovery of this material has had upon you personally including your job loss, and the references that speak highly of you, particularly in relation to the way in which you are facing this issue. It seems to me, in those circumstances, that it is open to the Court to impose a community-based order.

In those circumstances, I propose to place you on probation with a special condition, with a separate order in relation to community service. Considering the circumstances, I am also of the view that no conviction should be recorded against you. Now, I can only make those orders if you understand what is involved with them and agree to them, because it has got obligations on your part. So can you listen firstly to the conditions of the probation order. As I say, it will be for a period of two years.

Sorry, Mr McMillan, where would he report?

MR McMILLAN: Inala, your Honour.

HIS HONOUR: Inala?

MR McMILLAN: Yes.

HIS HONOUR: Conditions of probation are these: firstly, you must not commit another offence during the period of the order, two years. You must report to an authorised corrective services officer at Inala within two business days of today. You must report to and receive visits from an authorised corrective services officer as directed. You must take part in counselling and satisfactorily attend other programs as directed by the Court or an authorised corrective services officer during the period of the order. You must notify an authorised corrective services officer of every change of residence or employment within two business days after the change happens. You must not leave or stay out of Queensland without the permission of an authorised corrective services officer, and you must comply with every reasonable direction of an authorised corrective services officer.

There will be a special condition in that order to undertake such medical, psychological and/or psychiatric treatment and counselling in relation to stopping internet sexual offending as considered appropriate. I would imagine that will ensure

that you continue with the treatment that you are already receiving, but that is a matter for the department. What the order means is, you are under the supervision of Corrective Services in the community for a period of two years. You have got to cooperate in that. You go to the meetings that they require of you. They can come
5 and see you. You go to the courses and counselling that they think might assist you, and, most importantly, you do not commit any more offences.

If you break any of the conditions, it is a breach of the order. That means you get brought back before a Judge. The Judge gets a report from Corrective Services and
10 finds out whether you have been cooperating or not, and on a breach proceeding, the Court's got a number of options including resentencing you on this charge. So you are basically being given a chance. If you do not take the chance and come back here on a breach, you may well find a much more serious penalty is imposed on you, and the least of that will be a recording of a conviction against you which you will
15 carry for the rest of your life. So the order has got obligations. Do you understand what they?

DEFENDANT: Yes, your Honour.

20 HIS HONOUR: Are you prepared to do that order?

DEFENDANT: Yes, your Honour.

HIS HONOUR: I also propose to make a community service order that you perform
25 200 hours of community – or unpaid community work. Again, you have got to understand the order and agree to it. The conditions are that you must not commit another offence during the period of the order, and you will have 12 months to complete the hours of work. You have got to report to an authorised corrective services officer at Inala within two business days of today. You must report to and
30 receive visits from an authorised corrective services officer as directed. You must perform in a satisfactory way the community service directed by the authorised corrective services officer. You must notify an authorised corrective services officer of every change of residence or employment within two business days after the change happens, and you must not leave or stay out of Queensland without the
35 permission of an authorised corrective services officer, and, also, you must comply with every reasonable direction of an authorised corrective services officer.

What that means is, you are to perform 200 hours of unpaid community service work over the course of the next 12 months. That means you turn up when you are told to,
40 and you do the work you are told to in a proper way. Again, an additional condition is that you do not commit any offences during that period. Again, if you breach that order, if you fail to cooperate, you fail to turn up, you fail to do the work properly or you commit another offence, it is a breach of this order as well, and, again, that gets you brought back before a Judge and one of the options open is resentencing you on
45 this charge. As I say, if you do not take the chance you have been given, you may well find a much more serious penalty is imposed on you. Now, do you understand the terms of the community service order?

DEFENDANT: Yes, your Honour.

HIS HONOUR: Are you prepared to do that order?

5 DEFENDANT: Yes, your Honour.

HIS HONOUR: All right. In relation to the offence, I order that you be released under the supervision of an authorised corrective services officer at Inala for a period of two years. You must comply with the requirements set out in section 93(1) of the
10 Penalties and Sentences Act 1991, and you must report within two business days to an authorised corrective services officer at Inala. There is a special condition of that probation order. You are to undertake such medical, psychological and/or psychiatric treatment and counselling in relation to stopping internet sexual
15 offending as considered appropriate.

I further order that you perform unpaid community service for 200 hours. You must comply with the requirements set out in section 103(1) of the Penalties and Sentences Act 1992, and, again, you must report within two business days to an authorised
20 corrective services officer at Inala. Considering the circumstances, no conviction is recorded.

MR McMILLAN: May it please.

25 HIS HONOUR: Are there any other orders needed?

MR McMILLAN: No, your Honour.

MS AYLWARD: No, your Honour. Thank you.

30 HIS HONOUR: All right. Thank you, both.
