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**TRANSCRIPT OF PROCEEDINGS**

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**DISTRICT COURT OF QUEENSLAND**

**CRIMINAL JURISDICTION**

**JUDGE BARLOW QC**

**Indictment No 731 of 2019**

**THE QUEEN**

**v.**

**JUSTIN MICHAEL ARUNDELL**

**BRISBANE**

**10.45 AM, THURSDAY, 11 JULY 2019**

**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 Arundell, will you please stand. Justin Michael Arundell, you are to be sentenced for one count of possessing child exploitation material, to which you have pleaded guilty.

5 DEFENDANT: Yes.

HIS HONOUR: But for which the maximum penalty is 14 years imprisonment. The fact that you have pleaded guilty, and did so at an early stage, is indicative of your own remorse, and also assists very much the administration of justice in  
10 Queensland by not taking up a lot of time of prosecutors, defence, counsel and lawyers, the Court, and any other witnesses. Those matters stand you in good stead in terms of penalty.

The material which was discovered, with which you were in possession, comprised  
15 mostly what is classified as low level child pornography. However, the fact that it is low level does not detract from the fact that it is harmful to those children involved in the images and the videos, to engage in those types of activities at such young ages. The ages of the children appear to have been between about 10 and 14, and they were engaging in various sexual acts, including, in the worst video, quite a long  
20 video, involving children having anal and oral sex with each other. I should say boys having anal and oral sex with each other.

As you heard counsel for the prosecution say, this sort of crime is not a victimless crime, because of the harm it does for you to download and view images and videos  
25 of these sorts of activities by young children, because they have been required to engage in those activities for someone else's benefit, and for the pleasure of people like yourself. Not only that, the fact that you have downloaded this material and viewed it encourages others to do so, and encourages, in particular, the makers of these images, to continue doing so.

30 So that is why it is considered to be a serious crime, and as you heard, between 2011 and this year, the maximum penalty has been increased for this crime, from five years to 14 years, demonstrating the seriousness with which Parliament and the community view it. I should say, there were 14 videos and 15 images, of which only  
35 one video was in one of the more serious categories, and I take that into account, namely the comparatively low level of the material of which you had possession.

Now, I have received a report, tendered on your behalf, of a clinical psychologist, Dr Frank Walsh, who has gone into a great deal of detail about your personal past  
40 history, and your personal struggles, internal struggles. I will not go into detail about those in my sentencing remarks, but I will say that I do not consider your internal struggles to be an excuse for downloading and viewing child pornography. It is different with adult pornography, perhaps, but not child pornography. However, since you were charged, you have been undertaking a long course of treatment with  
45 Dr Walsh, and you are continuing that treatment. My understanding, from your counsel, is that you intend to continue with that treatment further, if you can, if you are not sentenced to a term of imprisonment.

DEFENDANT: Yes, your Honour.

HIS HONOUR: And I think it has probably been brought home to you that this sort of material is not something you should ever download again. My concern is that 10  
5 years ago you had similar material, although a vastly greater amount of it, and a lot of it in the higher levels, and you were convicted on that occasion of having child exploitation material in New South Wales. You have since moved to Queensland and you are doing the same thing 10 years later, although to a lesser extent, it seems. That is of concern, and that is why it is so important that you continue the treatment.

10 I have been helpfully referred to three Court of Appeal cases in Queensland, that have demonstrated, in various circumstances, the sorts of penalties which might be imposed for possessing child exploitation material, particularly at the lower level. You are older than the people involved in those, and you should know better,  
15 particularly given your history, which makes your offence somewhat worse in that sense than some of those, although it is obviously not as bad as some, which had a great deal more material.

You have heard the submissions of both prosecution counsel and your own counsel,  
20 as to what might be an appropriate sentence. This is an offence in which sentences of imprisonment are not considered to be sentences of last resort. In other words, it is often the case that someone will be sentenced to imprisonment for engaging in this offence. It is appropriate that you receive a sentence of imprisonment.

25 But I consider, particularly in the light of your early plea of guilty and your ongoing treatment, that, at this stage, you should serve no actual term in custody. So what I propose to do is to sentence you to imprisonment for 15 months, and I say 15 months rather than around 12 months, because you have offended in the same way in the past. I will suspend that sentence wholly from today for a period of four years.  
30 Now, what that means is that if you offend again in that period, you will be liable to serve the unexpired portion of your sentence.

DEFENDANT: Yeah.

35 HIS HONOUR: Now, I have also been asked to order that your laptop, on which these images were found, be forfeited to the State, and you, through your counsel, have consented to such an order. So I make an order in terms of the draft order that has been initialled by me and will be placed on the file. Have I overlooked anything,  
40 gentlemen?

MR DICKSON: No, your Honour.

MR BONASIA: No, your Honour. Thank you.

45 HIS HONOUR: All right. No. Well, thank you for your assistance. You are free to go.

REVISED