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THE SUPREME COURT OF  
THE NORTHERN TERRITORY

SCC 22340377

THE KING

and

EDGAR MAXWELL HAYDEN

(Sentence)

KELLY J

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON TUESDAY 26 NOVEMBER 2024

Transcribed by:  
EPIQ

HER HONOUR: All right, I am going to sentence Mr Hayden now. Mr Hayden, you can remain sitting down while I do that because I need to talk to you about quite a few things. Edgar Maxwell Hayden, you have pleaded guilty to one count of possessing child abuse material in the form of data held on a computer or contained in a data storage device, having used a carriage service to access some material. That offence carries a maximum penalty of imprisonment for 15 years.

You have also pleaded guilty to one count of accessing material using a carriage service, that material being child abuse material, which also carries a maximum penalty of imprisonment for 15 years.

I am going to talk relatively briefly about the facts of the offending. They are set out in a statement of agreed facts which form part of the court record. The child abuse material in this matter was categorised by the Northern Territory Joint Anti-Child Exploitation team in accordance with the Australian Child Abuse categorisation scheme, which quite frankly is of very little assistance in assessing the objective seriousness of this offending.

There are only two categories and they do not really distinguish particularly well between serious and nonserious offending. However, I have been provided in the agreed facts with some sample descriptions of material which provide some assistance in that respect.

Police started an investigation and eventually turned up with a search warrant at your home on 29 November 2023. And during that search, they reviewed some internet capable devices at your home and found some child abuse material and a record of searches that you had made looking for child abuse material.

You provided police with passwords in order to access those devices, but as the learned prosecutor has pointed out, you were obliged to do so. Police also seized your phone and your computer. You were arrested on 13 December 2023 and declined to take part in a formal interview with police, which is your right.

Analysis of your gaming computer did not uncover any child abuse material, but did uncover a number of searches which has been pointed out was similar to the searches that you engaged in, in the offending in 2017. Police were not able to confirm whether those searches resulted in the viewing or access of child abuse material. You had installed a cleaner program in that computer which removes traces of online activity.

In your mobile phone that is the subject of count 1, police located 21,189 images excluding duplicates. The data indicates that those files were possessed by you for an extended period of time during 8 March 2021 and 27 November 2023, and they were stored in various locations on your mobile phone.

There was a secure folder in which 8665 child abuse material images were located. The agreed facts set out some sample descriptions of that child abuse material. Suffice to say that the images involved children as young as 4 years old, at

least one, in a distressed condition. It involved fellatio and penetrative sexual activity of young children, and fuller descriptions are set out in those agreed facts.

Count 2 involves the uploading of files and the number of files uploaded were 1280 child abuse material files to your SkyDrive account, which you accessed using a carriage service. You have a prior criminal conviction in 2017 for essentially very similar offending, which brings into play the mandatory minimum sentencing provisions for this offence.

Your lawyer has provided me with some information about your antecedents. You are now aged 54. You were born in Canberra. You completed Year 10 at Western Creek High and you have lived in Darwin for around about 15 years.

You are married and have two adult children, aged 23 and 27. You were a serving police officer for 12 years and I gather from the presentence report that you reached the rank of Acting Sergeant. You lost that job due to the offending in 2017. After your release from prison in 2017, you were employed in a number of positions, including sales and storeman's duties.

I should add that after you left school, you did an apprenticeship and you are a qualified mechanic and have owned your own business from time to time. You were working as a car and truck salesman at the time of your arrest on these charges. You have always maintained a strong employment history. You already have requisite skills and are likely to be able to maintain employment or start your own business again in the future.

Now, I need to talk to you a little bit about the things I have to think about in sentencing you. The possession of child abuse material is a serious offence, as can be seen by the maximum penalties. The production of that material involves the actual abuse of real children, and accessing those sites contributes towards providing a market for that material and encouraging the abuse of those children.

It is becoming increasingly prevalent and it is difficult to detect. The child victims are not only traumatised by the original abuse, but they may be retraumatised over many years, knowing that the images of their abuse, their distress, their humiliation and their pain can be viewed online years later by men like you for their sexual gratification.

So general deterrence and denunciation are important considerations in cases of this nature and prior good character are generally to be given less weight. Because this is a subsequent offence, there is a mandatory minimum of 4 years, and that mandatory minimum is reserved for the least serious categories of offending. This is not the least serious category.

Although the number of images you possessed was not large by comparison with some, it was substantial, 21,000-odd images. And then count 2, accessing some 1200 images.

The objective seriousness is certainly in between the low end and the midrange because of the number of images, the depraved nature of a number of those images and the young age of many of the children who were abused and the gravity of the sexual activity that was depicted.

You have pleaded guilty and you are entitled to a reduction in your sentence for that, and I intend reducing your sentence by around 20 percent. I know your lawyer has made an application to the effect that you are ashamed, and I accept that you are ashamed. But this is a second offence and I do not consider that your plea, in the face of a strong Crown case, is indicative of genuine remorse.

So I am going to sentence you now. Because of that mandatory minimum, I would have sentenced you to a term of imprisonment of 5 years on count 1 and also on count 2. I am going to reduce that by 20 percent for your plea of guilty on each charge.

So on count 1, you will be convicted and sentenced to a term of imprisonment for 4 years. Likewise, on count 2, you will be convicted and sentenced to a term of imprisonment for 4 years. I consider those two should be served mostly together, but there should be some small degree of accumulation to reflect the different nature of the offending.

I am going to direct that the sentence for count 2 be served cumulative with the sentence for count 1 for a period of 6 months. That brings your total period of imprisonment to 4 years and 6 months. I do not have a choice in the matter. After 3 years, there has to be a non-parole period.

There is no mandatory minimum non-parole period, however, and I am going to direct that there be a non-parole period of 18 months. The sentence is to start on the 13th of December 2023.

Is there anything further?

MS CHALMERS: Your Honour, we have requested forfeiture of the Samsung mobile phone, if that order can be made.

HER HONOUR: Yes.

MS CHALMERS: We are happy to send a form of order, if need be, but an oral order will do fine.

HER HONOUR: Yes, all right. Mr Maley, I take it you have nothing to say about that? Yes, I order forfeiture of the Samsung mobile phone - - -

MS CHALMERS: Thank you, your Honour.

HER HONOUR: - - - the details of which are set out in the agreed facts.

MS CHALMERS: Thank you.

HER HONOUR: All right, well thank you both.

Please adjourn the court.

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