

IN THE CHILDREN'S COURT OF VICTORIA

CRIMINAL DIVISION

R

v

P and others

<u>JUDGE:</u>	GRANT J
<u>WHERE HELD:</u>	Melbourne
<u>DATE OF HEARING:</u>	17th and 18th October 2007
<u>DATE OF SENTENCE:</u>	5 November 2007
<u>CASE MAY BE CITED AS:</u>	R v P & ors
<u>MEDIUM NEUTRAL CITATION:</u>	[2007] VChC 3

REASONS FOR SENTENCE

Sentencing principles applicable in the Children's Court – plea of guilty to serious offences – lack of prior convictions – assessment of suitability for participation in MAPPS – differences between probation order and youth supervision order – whether order should be with or without conviction.

<u>APPEARANCES:</u>	
For the Crown	Ms M. Williams SC with Mr J. Vandersteen
For the Accused	Mr P. Dunn QC for DP Mr D. Sexton for JR Mr G. Holden for RM Mr J. Dowsley for SB Mr M. McNamara for NO Mr P. Casey for BT Mr Douglas for BD Mr D. Annett for JS

---

HIS HONOUR:

- 1 DP, JR, RM, SB, NO, BT, BD and JS you have each pleaded guilty to the four following offences –
  - That you did at (location removed) “location 1” on the 1<sup>st</sup> of June 2006 and the 30<sup>th</sup> of June 2006, by intimidation procure FS to take part in an act of sexual penetration with JR;
  - That you did at location 1 between the 1<sup>st</sup> of June 2006 and the 30<sup>th</sup> of June 2006, by intimidation procure FS to take part in an act of sexual penetration with RM;
  - That you did at location 1 between the 1<sup>st</sup> of June 2006 and the 30<sup>th</sup> of June 2006 assault one FS;
  - That you at location 1 between the 1<sup>st</sup> of June 2006 and the 30<sup>th</sup> of June 2006 did make child pornography namely a film which depicts a minor under the age of 18 years engaging in sexual activity.
- 2 These are serious offences. The procuring offences carry a maximum term of imprisonment under the Crimes Act 1958 of ten years imprisonment. The offence of common law assault carries a maximum penalty of five years jail and the make pornography offence carries a maximum of penalty of ten years jail. These are penalties that are potentially available to adult offenders.
- 3 You have pleaded guilty to these offences in the Children’s Court. The most severe order that can be made in the Children’s Court is an order for detention in a Youth Justice Centre. Where the Court is dealing with offenders who are over 15 and there is more than one offence the Court can impose an aggregate sentence of detention of three years.
- 4 The offences are charged on a representative basis. This means that each charge is representative of a broader and more systematic pattern of

- criminality. The sentence for a representative offence can reflect the fact that the offence occurred in a wider context. It allows the Court to take account of the whole of the “circumstances” of the offending as it relates to the particular charge.
- 5 On the common law assault and make child pornography charges it is said by the prosecution that you acted in concert and/or aided and abetted each other in the commission of the offences. The position is different for the procurement charges. Each of you are fully responsible for the offences of procure sexual penetration by intimidation. You admit through your pleas of guilty that your behaviour intimidated the victim into engaging in acts of sexual penetration with JR and RM.
  - 6 The prosecution opening referred predominantly to the material contained in a DVD that was made by DP. This DVD resulted from the filming of your criminal behaviour at the time it was occurring.
  - 7 FS is the victim of your criminal behaviour. She was aged 17 at the time these offences were committed. Her father is concerned to ensure her circumstances are not misrepresented. In the victim impact statement provided to the court Mr S describes his daughter as “mildly delayed in her intellectual development.” During the investigation of this matter Ms S was assessed by a Forensic Paediatrician. No intellectual disability was identified but the paediatrician noted Ms S “appeared eager to please and the overall impression was the complainant was functioning at an intellectual age less than 18 years of age.”
  - 8 In March of 2006 Ms S met two of you - SB and RM. She exchanged telephone numbers with SB. Over the next two months there was contact at various times with SB (and others), SB, NO and two others, and RM and another. At different times Ms S engaged in sexual acts with some of you. Certainly, SB, NO and RM had all engaged in some form of sexual activity

- with Ms S prior to the day of the offending. Those of you involved with Ms S at this time capitalised on her generosity and requested her to purchase phone credits, clothing and other items
- 9 On a date between the 1<sup>st</sup> of June 2006 and the 30<sup>th</sup> of June 2006 Ms S was contacted by NO, SB and another male. She was encouraged to attend the location 1 area. SB, you have disclosed to the MAPPS assessor that based on previous experiences with Ms S you had an expectation that she would engage in sexual acts. It is clear from the material contained in the MAPPS reports that, with the exception of JS, all of you had knowledge of Ms S prior to this day and when you attended at the railway station you did so anticipating that you would participate in or witness sexual acts. Ms S, when spoken to by the police thought she was meeting “SB, NO and maybe H as well.” She had no idea that she would be met by the large group present at the station.
- 10 That afternoon all of you were part of a group of at least eleven young men that met Ms S at the location 1 railway station. Some of you – SB, RM, BD and BT attended because you had been in contact with each other and arranged to meet Ms S. Two of you – DP and JR maintain that you met the others by coincidence and you then decided to become involved. NO you maintain that you only discovered Ms S was coming to location 1 shortly before she was to do so and decided you would meet her also. I am satisfied that JS met the group without any pre arrangement and joined the group when told at the station that “one of the boys was to get a head job.”
- 11 You all walked with Ms S to the (name removed) River area. As you walked along a path near the river DP started to film what was happening. All of you encircled Ms S. Some of you began shouting and chanting “the victim”. This was not an isolated one off chant. It was loud and taken up by a number of voices. It was clearly indicative of your attitude to Ms S at that time and what you expected to occur. This was the start of a shocking period of behaviour

towards Ms S. It is the commencement of a period of sustained sexual and physical assault.

- 12 The prosecutor has described in paragraphs 17 to 60 of her opening what the camera recorded. It is an accurate account of what occurred except in this respect. In paragraph 25 it is said that BD poked Ms S with a stick. I have viewed the DVD and I am unable to say that occurred. Certainly, BD raises the stick and points it towards Ms S. That is all that I am prepared to find. Otherwise I adopt the outline as presented by the prosecutor as being an accurate account and I append it to this judgement.
- 13 All of you have pleaded guilty to serious criminal offending. Offending that has shocked the community. You treated Ms S in a cruel and callous manner. Your behaviour was cowardly, brutal and above all else, a serious breach of the criminal law. It was, as the prosecutor said, a sustained attack by a pack of young men upon a vulnerable young woman.
- 14 I have been provided with victim impact statements from the victim and her family. Ms S has suffered significant emotional and psychological trauma as a result of your criminal behaviour – “shocked that these did this to me and then made a DVD and sold it for \$5....I was angry that they could do this to someone let alone me .....I was really emotional about what happened couldn't really talk about it to anyone without getting really upset ....” And also “my life has changed forever because I can't walk down the street without people forgetting about what happened to me ....people harass me.” This last statement recognises what is a particularly nasty aspect of your offending. The offending on the day in question is shocking enough. You compound the harm to the victim by recording your behaviour and making a DVD which is distributed throughout the local community. I will have more to say about this shortly. Fortunately Ms S did not suffer any lasting physical injuries. Ms S does acknowledge that “it has been easier on my family and me since some of the boys have pleaded guilty.”

- 15 The victim impact statement of Mr S was read to the Court. It was apparent that he and his wife have suffered significant economic loss as a result of your offending. The whole family has suffered major emotional trauma. It is true that Mr S identifies how some media outlets have added to that emotional distress. In the case of some outlets the desire to “run” the story has worked against the wishes of the victim and her family. However, the fact that the story developed in the way that it did is a consequence of DP’s filming the criminal behaviour, producing the DVD and facilitating its distribution.
- 16 I do note the statement by Mr S that “things have lifted for me since the boys pleaded guilty and freed my daughter from having to give evidence.”
- 17 I have spent some time on the circumstances of the offence and the impact on the victim and her family. I move now to the other matters that are important for the Court to consider when determining an appropriate sentence.
- 18 When the offences were committed you were all – with one exception aged 15 or 16 years old. The exception – SB – was 17 years old. None of you have prior convictions. As a general principle the law has always recognised the importance of rehabilitation as a sentencing principle for the young offender – particularly the young first offender.
- 19 The fact that you were all under 18 means that the charges can be heard and determined in the Children’s Court.
- 20 We have a Children’s Court because we accept, as a community, that young people should be dealt with differently to adults. The difference between the “adult” system and the system established for young offenders was discussed by Vincent J in the case of R-V-Evans (2003) VSCA 223. When speaking of the regime established for dealing with the young offender His Honour said – “Underlying this system is the attribution of considerable significance to the generally accepted immaturity of the young people who appear before the Children’s Court and the need, in the interests of the community and the

young persons concerned, to endeavour to divert them from engagement in anti-social conduct at that early stage of their lives. These considerations can and do lead to dispositions which would be regarded as entirely inappropriate in the case of older and presumably more mature individuals." (My emphasis).

21 The Children's Court in determining which sentence to impose on a child, must, under the provisions of section 362 of the Children, Youth and Families Act 2005 , as far as practicable, have regard to –

- a) The need to strengthen and preserve the relationship between the child and the child's family;
- b) The desirability of allowing the child to live at home;
- c) The desirability of allowing the education, training or employment of the child to continue without interruption or disturbance;
- d) The need to minimise the stigma to the child resulting from the Court determination;
- e) The suitability of the sentence to the child;
- f) If appropriate, the need to ensure that the child is aware that he or she must bear a responsibility for any action by him or her against the law; and
- g) If appropriate the need to protect the community, or any person, from the violent or wrongful acts of the child.

22 Your age, your lack of prior convictions and your personal circumstances (which I will refer to later) are all important factors for me to consider in determining the appropriate sentence. These facts may not, however, if they stood alone, have persuaded me to avoid a sentence of detention for this offending. The offending here is so serious that, in the absence of a plea of guilty and your willingness to participate in an appropriate treatment regime,

you would have been at significant risk, had you been found guilty after trial, of being detained in a Youth Justice facility. It follows from what I have just said that I give great credit to your pleas of guilty. They are so significant because they relieve the victim of the burden of giving evidence. She is not compelled to re-live these terrible events.

23 Importantly, your pleas of guilty also indicate your remorse. The pleas of guilty indicate your understanding of the importance of accepting responsibility for what you have done. I am satisfied that the pleas have been entered at a relatively early stage and they are indicative of your remorse. In addition, you have all been assessed as suitable to participate in the MAPPS program. That positive assessment is crucial. It means I am able to make an order that enables you to remain within the community (with all the attendant benefits to you), whilst making you accountable for what you have done and, in the long term, protecting the community.

24 I need to make some comments about the MAPPS program. MAPPS is the Male Adolescent Program for Positive Sexuality. It is based within the Adolescent Forensic Health Service of the Royal Children's Hospital. It is a program that is run for young males aged 10-21 who have been found guilty of a sexual offence. The program "places emphasis on the young person accepting responsibility for his offending behaviour and for making the necessary changes so that he can lead a life that doesn't include offending." The program is held in high regard. Independent evaluation has shown it to be very successful in protecting the community by ensuring young men cease offending and change their attitudes and behaviours. It is not an easy option. You and your family will be engaged in various aspects of treatment. The treatment will be tailored to your individual needs as assessed by MAPPS. The average period for treatment is nine months.

25 In a general letter to the Court (accompanying the individual assessment reports) Ms Lancefield, a clinical consultant at MAPPS stated, "The offences,

involving the sexual and physical assault, exploitation and degradation of a vulnerable female, committed by these young men are viewed as very serious. All of the young men require rehabilitative interventions to address their offending and reduce the risk of further anti-social behaviour.” I agree with those comments.

26 MAPPS works with Youth Justice. The MAPPS report to the Court recommends probation or youth supervision. It is recommended that there be a special condition of the order that you participate in and complete the MAPPS program.

27 I do intend to give you young men the opportunity to remain within the community, to be supported on a community based disposition with a condition to participate in and complete the MAPPS program. You have all been assessed as suitable to participate in the program, you have all expressed a willingness to complete the program and it said that you all generally have good prospects of rehabilitation. There are individual differences in your family circumstances which will mean that for some of you there will be intervention by Youth Justice to provide on-going stability in that area.

28 You have been given this opportunity to remain within the community because you were under 18 at the time of the offending, you have no prior convictions, you have pleaded guilty and you are suitable to participate in a program that will strongly focus on individual treatment for your rehabilitation. I accept that each of you have positive protective factors in your lives which, when viewed with your lack of priors, pleas of guilty and willingness to engage in treatment indicates that you are generally good prospects for rehabilitation.

29 The prosecution submits that the Court should impose lengthy supervisory orders – either youth supervision or probation. Most defence counsel submit that probation is the proper order. The maximum aggregate period for either

order in a case of this type is 18 months. A youth supervision order is more intensive than a probation order. The most important differences between the orders are firstly, a youth supervision order requires a young person to attend a Youth Justice unit “or any other place specified in the youth supervision order” and, secondly, a young person on a youth supervision order “must participate in a community service program, if so directed by the Secretary” (of the Department of Human Services). I can only impose a youth supervision order after considering orders that are lower in the hierarchy and determining the appropriateness or otherwise of those orders.

- 30 Probation orders and youth supervision orders can be made with or without conviction. Fox and Freiberg in their book on Sentencing describe the consequence of conviction as follows –

“The recording of a criminal conviction is a significant act of legal and social censure. It is a judicial act by which a person’s legal status is officially and, under present Victorian law, irretrievably altered. The alteration effected by a conviction is a diminution of the offender’s legal rights and capacities. These follow automatically from the fact of conviction and are not necessarily tied to the particular sanction that follows.”

- 31 The fact that the general consequences of conviction are in the nature of a penalty is a relevant matter for a court to take into account. It is also relevant in those cases where there are particular, identifiable consequences arising from conviction in the individual circumstances of an offender.

- 32 The Children, Youth and Families Act 2005 is silent on the type of matters the Court should take into account in exercising its discretion to record a conviction or otherwise. I have been referred by a number of counsel to section 8(1) of the Sentencing Act 1991 which provides –

“In exercising its discretion whether or not to record a conviction, a

court must have regard to all the circumstances of the case including –

(a) The nature of the offence; and

(b) The character and past history of the offender; and

(c) The impact of the recording of a conviction on the offender's economic or social well-being or on his or her employment prospects.”

I accept these factors must apply when considering the exercise of discretion in the Children's Court with an appropriate acknowledgement of the matters referred to in section 362 of the *Children Youth and Families Act 2005*.

33 I now move on to the personal circumstances of each of you and also explain what orders I intend to make for each of you.

34 I will commence with DP. You are a young man without prior convictions. You have strong family support and you are a very good student. As a result of your offending you were expelled from the school that you were attending in Geelong. You also lost your position of part time employment at the Farmers Fresh Warehouse. You have had to pick up the pieces of your education and you have done that at RMIT. The reference from one of your teachers is particularly impressive. Your semester one unit report indicates you are achieving very strong scores and that you are destined to engage in tertiary study. Your counsel has advised the Court that you have applied to undertake tertiary studies in media at RMIT, Victoria College of the Arts, Victoria University and a college in the United States. You have been assessed as suitable to participate in the MAPPS program in collaboration with Youth Justice.

35 The most appropriate order in your case is youth supervision order. You were an active participant and played a significant role in the offending behaviour. The DVD shows that on at least two separate occasions you endeavoured to set fire to the victim's hair. On one occasion you actually set her hair alight.

You were active at different times in kicking the victims clothing towards the mud and throwing the victim's clothing into the water. At one stage you collected clothing, threw it into the water and stated "you're going topless." You have accepted your involvement in procuring sexual penetration by intimidation. These acts of penetration take place on a large number of occasions and you are busy filming them.

36 Then, of course, we have your active and significant involvement in making a pornographic film. There can be no doubt about your role as editor, producer and distributor of the DVD. It was your decision – with your cousin – apparently, to call the DVD "Cunt the Movie." The MAPPs report at page 4 and 5 says this – "The distribution of the film has enabled the viewing of the offence by wider audiences, with significant victimizing consequences for FS.....His persistence in broadening the audience of the offences at FS's expense is concerning."

37 The seriousness of the offending warrants a youth supervision order. Your counsel urges that I not record a conviction against you. Mr Dunn highlights the possible affects of a conviction on you. It is said that you may be studying next year in America or alternatively pursuing a career in media at some time in the future which will possibly require you to travel to America. Anyone convicted of an offence of moral turpitude is ineligible for a visa. The submission is based on the prospect of something that might happen in the future. It is not at this stage certain that you will travel to America to study. In any case, the order that I am about to announce will ensure that you will not be able to do so immediately. It has also been acknowledged by your counsel that, if in the future you desire to travel to America, you may still be able to obtain a visa because there is a waiver program which allows the authorities responsible for administering the visa regime to exercise a discretion and issue a visa even if you carry a conviction.

38 It is also said by your counsel that to impose a conviction on a young man with his whole life ahead of him places an unnecessary impediment to his rehabilitation. The prosecutor submits in response that the seriousness of this offending and the central and significant role played by you require a conviction to be recorded. It is said that you have already got the benefit of matters in mitigation by receiving a sentence that does not involve immediate detention. The prosecutor maintains that the seriousness of this offending requires a conviction be recorded.

39 This is very serious offending. I have already indicated that in the absence of the guilty plea and an ability to participate in MAPPS there was a real likelihood of a sentence of detention being imposed on a finding of guilt. It is the seriousness of the offending, your central and major role in the criminal activity and the need for you to understand your responsibility for what occurred that have convinced me that a conviction must be recorded. You will be convicted on all the charges. On the two charges of procuring sexual penetration by intimidation and on the common law assault you will be placed on a youth supervision order for twelve months. On the charge of making a pornographic film you will be placed on a youth supervision order for six months to be served cumulatively upon the order on the other charges. The orders will have a special condition that you participate in and complete the MAPPS program. In a moment I will explain to you the general conditions of the order and what would happen if the orders were to be breached. I will do that after announcing the orders to be made for the other offenders.

40 I now move to JR. You are also a young man with strong family support. You are clearly a very good sportsman and have been involved in sporting clubs as a player and coach. You did not do well at school but that has not stopped you from obtaining employment. You are currently employed in the demolition industry and your employer has provided a strong reference. In addition, you work casually at a tile centre when able to do so. The MAPPS report

highlights your family support and your positive engagement in employment and sport as being protective factors which will reduce and manage the risk for re-offending. There is no doubt your whole family has felt great distress at your involvement in this offending behaviour. You, like DP, have had advantages in your life that many young people coming into the Children's Court have not had. It is hard to understand how you could have become involved in this serious criminal offending.

41 Your counsel correctly noted that you were actively and significantly involved in the offences at the river bank. You were directly involved in acts of sexual penetration. You showed contempt for Ms S and treated her cruelly. At one stage you hit her on the top of her head with your penis, on another occasion you exposed your bottom and put it next to Ms S's head, on another occasion you dragged her along the ground by her feet. You will also be convicted and placed on a youth supervision order. I impose the conviction and make the youth supervision order because of the seriousness of the offending, your central and active involvement and to ensure you understand that you are accountable for your acts of criminality. On the charges of procuring sexual penetration by intimidation and making a pornographic film, you will be placed on a youth supervision order for twelve months. On the common law assault you will be placed on a youth supervision order for six months to be served cumulatively upon the order made on the other charges. There will be a special condition that you participate in and complete the MAPPS program.

42 RM you do not have the same level of family support as the other offenders. This is unfortunate. Your family is currently in Western Australia and you would like to be able to join them. That is unlikely to be able to occur for sometime. You currently reside with a family friend who offers the best support that she can. The report from MAPPS indicates that lack of stability has been a feature in your life. That lack of stability relates to your living circumstances and your schooling. You have not had a good education. You

are not, it appears, work shy but you are currently unable to find employment. The MAPPS report recommends a Youth Justice order that includes the provision of support to increase positive community engagement and stability in day to day functioning. I have been provided with a report from Pamela Matthews, Forensic Psychologist. It indicates that your response to the juvenile sex offender protocol indicates a low propensity to re-offend in a similar fashion and receptivity to intervention. The MAPPS report indicates you are assessed as suitable to participate in that program.

43 You also were an active and significant offender. You were directly engaged in acts of sexual penetration. You spat on Ms S at the start of these criminal acts, you lit her hair with a cigarette lighter on two occasions and you hit her on the back of her head with your penis. For the reasons stated for JR you will also be convicted and placed on a youth supervision order. The orders will be the same as those announced for JR.

44 SB you are supported by your mother, stepfather, and half siblings. You have a close relationship with your mother. You did not do well at school but have recently obtained an apprenticeship as a roof tiler. You should seize the opportunity that has been provided in obtaining this position and focus on completing your apprenticeship. You are obviously a very skilled footballer with a desire to play at the highest level. Your girlfriend and her parents have written positive references on your behalf. The report from MAPPS is very positive noting that you were highly cooperative and very open in disclosing your involvement. The report states that you present a low risk of re-offending sexually. You have importantly demonstrated an increasing level of concern and empathy for FS.

45 You also were an active participant in this offending. You were one of the persons who contacted Ms S to attend and meet at location 1. Based on previous contact with Ms S you had an expectation that she would engage in sexual acts. At a time when RM and DP were trying to light Ms S's hair you

were standing in the tree above her and laughing at her distress. At one stage you leaned over her and spat on her head. At another stage you reach towards her breasts, you used your phone at times to take pictures of what was occurring, you poked Ms S with a stick and forced her head into the groin of RM. You attempted to urinate on her jacket. On another occasion you try to pull her jeans down and you abuse her. You kicked her clothes towards the river. The behaviour is shocking. I am satisfied, however, that there should be some recognition of the differences between your offending and that of DP, JR and RM. Unlike DP you were not active in the production and distribution of the DVD and, unlike JR and RM, you did not engage in acts of sexual penetration. For these reasons the order I make in your case is different to that made for the previous three offenders. You will be convicted on all charges and placed on a youth supervision order for a period of twelve months. There will be a special condition that you participate in and complete the MAPPS program.

46 NO you come from a strong and supportive family. References have been tendered on your behalf which speak of you in positive terms. You are heavily involved in sport and are concerned that a conviction for these offences would limit your opportunity to coach junior footballers. You are employed as a second year apprentice in the roofing industry. You also should work to complete that apprenticeship, to obtain the qualification that will build your prospects for the future.

47 You were actively involved in the intimidation and assaults upon Ms S. At one stage you climbed a tree and stood above her. You spat on her and dropped your cigarette onto her. At different times you poked at Ms S with a stick. At a later time you exposed your bottom and sat against her face whilst making offensive comments. You sprayed her breasts with deodorant and wrote across her breasts. At another stage you pulled down her jeans and then later again when Ms S is seated on the ground you approached her from behind

and urinated on her. This was an act designed to humiliate Ms S. Your behaviour was shocking. I note, as I did with SB, that you did not produce the film and did not engage in an act of sexual penetration. You also will be convicted and placed on a youth supervision order for a period of twelve months with a special condition to participate in and complete the MAPPS program.

48 BT you reside at home with your mother and sisters. You have a good relationship with your mother. In July 2005 you were referred to Associate Professor Vance at the Royal Children's Hospital for assessment of your behavioural problems and disorders. You were diagnosed with obsessive compulsive disorder and dysthymic disorder and it was recommended that you be treated with individual supportive psychotherapy and particular medications. The report indicated that you were to be reviewed annually. It is not clear if you are still on medication or in receipt of ongoing treatment. You are involved in sport and particularly in football. You have, it seems, been able to obtain work and you are currently employed in "landscaping".

49 Your involvement in this offending is predominantly as part of the pack that is involved in intimidating the victim and cheering and supporting others as they engage in their various sexual and physical assaults. There is one assault which is directly perpetrated by you. It occurs after DP and RM engage in their hair lighting behaviour. You walk behind Ms S and produce a can of deodorant. You used a cigarette lighter to ignite the accelerant and spray it towards the victim's hair. You in fact set fire to her hair and she screamed and fell to the ground. It was a nasty, brutal act. It was an act of hostility that requires to be recognised as such. The MAPPS report indicates that you are suitable for treatment although you are struggling to appreciate the full impact on the victim of your behaviour. You also will be convicted and placed on a youth supervision order for a period of twelve months with a special condition to participate in and complete the MAPPS program.

50 BD you are the youngest of five children and you reside with your mother. Your father left your home some three years ago. You describe your relationship with your mother as good. Your father lives in Sydney and you describe your relationship with him as “alright.” You did not do well at school leaving during year 9. You obtained an apprenticeship in carpentry which has discontinued because your boss has “let you go”. Your ambition is to become an apprentice plumber. Your personal circumstances are more unsettled than some of the other offenders and this may impact on your prospects of rehabilitation. It is disconcerting to hear that your employer has had to “let you go.” The writer of the reference on your behalf refers to your challenging behaviour and the MAPPS report reveals limited insight into the impact of your offending upon Ms S. You also have been dealt with for a dishonesty matter since the commission of these offences. You were placed on an accountable undertaking. These matters all show a level of instability in your life that may impact on your rehabilitation.

51 You were 15 at the time of this offending. The only other 15 year old was RM. You were the second youngest of the offenders. You have explained to the MAPPS assessor that you learnt about FS attending at location 1 whilst “chatting” on the net with “co-offenders BT, S, SB and NO”. The report says that information was shared about FS; in particular that she would be travelling to location 1 to meet with co-offender SB and others at the station and that she was going to give “head jobs”. You, like BT, were involved in intimidating the victim and cheering and supporting others who engaged in sexual and physical assaults. I am satisfied that you did not poke Ms S with a stick. You did write on the victim’s breasts. Your direct physical involvement was less than the three previous defendants and you were one of the younger offenders. For these reasons I intend to convict you and release you on probation for a period of twelve months. The order will have a special condition to participate in and complete the MAPPS program.

52 JS you reside with your mother and three brothers. The marriage of your mother and father broke down about two years ago and you have been a great support to your mother during this difficult time. You are a year 12 student and you have produced very strong references from senior teachers at your school. You hope to continue your education at the tertiary level. Ms O, a close family friend has also provided a favourable and supportive reference.

53 You did not know Ms S before this incident and you only met up with the group at the station by accident. You heard that one of the boys was going to “get a head job” and you decided to attend and watch. You initially joined the circle that established itself at the start of the offending behaviour and you watched as RM commenced his acts of sexual penetration. You laughed at what was occurring. There is some dispute about the time that you left the area where the offending occurred. It appears from the DVD and the DVD log that you were still present after a number of the offenders had tried to light Ms S’s hair. There is no doubt that you did leave the immediate area where the offences took place and it appears this was before people started throwing her clothes away. You went and joined two other boys some distance away – boys who did not participate in the criminal behaviour and have not been charged. What is not disputed is the fact that you did not directly engage in any sexual or physical assaults upon Ms S and you did remove yourself from the area. The MAPPS report in your case is a very favourable one. You have taken responsibility and you have very good insight into the seriousness of the offending and its impact on the victim. The report explains that when you were asked who was to blame for the offences you stated all the boys were equally to blame. “We were there, we encouraged it, knew what was going on and we should have stopped it.” The assessment also indicates, “JS’s presentation on assessment indicated a range of factors both historical and in relation to the offence that ameliorate the need for treatment.”

- 54 I do not intend to convict you. Your involvement in the offences is at a different level to the other offenders and you show very good insight into the offending. In your case a probation order is the appropriate order. On all charges you will be placed on probation, without conviction, for a period of twelve months. You will be required to participate in the MAPPS program as directed by Youth Justice in consultation with MAPPS.
- 55 I conclude this matter by explaining to each of you the conditions of the orders that have been made. (Conditions read to defendants.) If the orders are breached by further offending or by non-compliance, you will be returned to Court and dealt with again for these offences. It would be very difficult to avoid a sentence of detention if a breach was proved.