

AA v PD [2022] NSWSC 1039

On 5 August 2022 the New South Wales Supreme Court handed down a decision concerning the historical sexual abuse of AA (a pseudonym) by Phillip Doyle in 1972, when AA was a 16-year-old boy. At the time of the abuse AA was employed by Doyle, at his cinema, the Mecca, in Kogarah. Although the conduct complained of constituted criminal offending, the Supreme Court proceedings sought monetary damages for the sexual abuse.

AA described his relationship with Doyle prior to the abuse as one where he and Doyle got on “exceptionally well” and he was treated like a “best mate”. Doyle frequently visited AA’s family home, spent time with his family, and often dropped AA home after his evening shifts at the cinema. On these occasions, Doyle would stop his car some distance away from AA’s home, talking with the then teenager for around ten minutes. On some of these occasions, Doyle would place his hand on AA’s thigh, causing him to feel “very uncomfortable”.

While working at the cinema, AA would change into his uniform prior to commencing a shift in the cinema changerooms. While AA changed, Doyle would frequently enter the changeroom and instigate conversation while he watched AA undress. Although no advances were made during these interactions, AA stated that this also caused him to feel quite uncomfortable. AA recounted Doyle owning a number of unique cars, one of which was raced at the Parramatta Speedway. AA recalled on several occasions visiting the speedway races with Doyle, as well as two or three other cinema employees, and a mechanic. It was after one of these trips that the sexual abuse is alleged to have occurred.

After returning from the speedway one evening, rather than dropping AA home, Doyle took the teenager to his unit in Cronulla. Shortly after arriving, Doyle took a shower, after which he emerged in the loungeroom, naked, and proceeded to dry himself with a towel. Doyle then suggested that AA take a shower, during which Doyle entered the shower still naked, and began to inappropriately touch AA. The teenager swiftly exited the shower as Doyle unsuccessfully tried to persuade him to engage in what Doyle was doing. AA never returned to work at the cinema following this incident.

Like so many cases of child sexual abuse, AA did not disclose the abuse committed upon him until 37 years after the fact. In 2009, having come across a local newspaper article detailing the arrest of Doyle for other historical cases of child sexual abuse, AA contacted the Police to make a statement. However, due to the distress caused by recounting his abuse,

AA was unable to complete his statement until 2018. AA subsequently commenced civil proceedings against Doyle in the Supreme Court in 2021. Doyle's offending had in fact been so prolific, it was detailed in the 2017 Royal Commission into Institutional Response to Child Sexual Abuse.

On 5 August 2022 Justice Chen of the Supreme Court found in favour of AA, awarding \$217,550.00 in damages. In reaching his decision that the abuse had occurred, on the balance of probabilities, His Honour considered a number of factors. Namely, the plaintiff's contacting police of his own volition, the consistency of evidence given in his 2009 and 2018 police statements, evidence of the change room incidents and car conduct as precursors to the shower incident, and admissions made by Doyle in connection with separate criminal charges for the shower incident. These were all regraded as evidence supporting that the shower incident occurred in the manner described by the plaintiff.

As is standard procedure in sexual abuse cases, AA was assessed by a forensic psychiatrist, who diagnosed a psychiatric injury and mild alcohol use disorder stemming from the abuse. The symptoms, however, were categorised as "mild" and "intermittent" and AA who had successfully maintained steady ongoing employment over the course of his adult life was given a favourable prognosis. These factors weighed on the moderate award of damages which consisted of sums for general damages, a small amount for past economic loss and loss of superannuation, out of pocket expenses, and interest. By contrast to the \$217,550 awarded to AA, another of Doyle's victims was in February 2022 awarded \$1.3 million for abuse committed upon him by Doyle.

These contrasting awards of damages highlight the varied outcomes in historical sexual abuse matters. Following the Royal Commission into Institutional Responses to Child Sexual Abuse in 2017, the statutory limitation period for bringing a claim in respect of childhood sexual abuse has been lifted. This means that anyone, of any age is now at liberty to commence proceedings for abuse suffered while they were a minor. Many of these matters are settled out of court, and Toby Tancred offers confidential and obligation free assessment of any potential claim for damages for sexual abuse.

