

**IN THE DISTRICT COURT
AT WELLINGTON**

**CRI-2016-085-001622
[2016] NZDC 17507**

THE QUEEN

v

IAN JAMES WALSH

Hearing: 8 September 2016
E Light for the Crown
C Tennet for the Defendant
Judgment: 8 September 2016

NOTES OF JUDGE P A H HOBBS ON SENTENCING

[1] Mr Walsh you appear for sentence on three charges. Indecent communication with a young person under 16, a charge of travelling to meet a young person following sexual grooming and finally a charge of knowingly manufacturing an objectionable publication.

[2] The charges involving the indecent communication and travelling to meet a young person following sexual grooming are effectively one transaction or connected offending that can be dealt with separately from the objectionable publication charge, bearing in mind of course the need to have regard to the totality principle should that be necessary.

[3] The website in question is a social networking website that allows members to post a profile, providing details about themselves and enabling them to engage in communication with other members. It is commonly used by people to

communicate with others who have shared interests or hobbies. You operated a profile on the website with a username. On 25 May 2016 you began engaging with somebody you thought was a 13 year old girl. The person you were communicating with was in fact a police officer. You identified yourself by name, address and phone number and expressed a desire to meet this fictitious 13 year old.

[4] Between 25 May 2016 and 2 June 2016 you sent hundreds of text messages to this fictitious 13 year old. You expressed a desire to photograph her, offered to massage her and to supply her with alcohol. The messages escalated in their sexual content and you expressed a desire to have sex with this girl. You described in some detail the sexual intercourse you would have, including taking her virginity and the bleeding and pain that might involve and your own ejaculation.

[5] This fictitious 13 year old sent messages confirming her age and the fact that she was in high school. That was acknowledged by you but did not seem to matter to you as you continued to describe your sexual intentions and indicated that the relationship needed to be kept secret from her parents. If you were to be caught, you said you would be sent to jail.

[6] You encouraged the recipient of these messages to meet with you after a netball game so that you could return to your flat with this person for sexual intercourse. You arranged a meeting at a local McDonald's restaurant. You were observed by the police leaving your address and going to this restaurant. You sent a message to this police officer advising that you were present. You were ultimately arrested upon your arrival.

[7] Examination of a phone revealed several video files. Four of these files were created on 8 May 2016. The videos comprised four minutes and 13 seconds of footage of a naked prepubescent sleeping female child being filmed on a bed. In essence it was film of a film. You used your mobile phone to film live footage being streamed to your laptop via a Facebook video call. You were directing the filming by instructing the unknown person operating the camera. The focus of the filming was around the genital area of the naked child and you gave instructions to the person filming and while giving instructions you made inappropriate comments and

you were masturbating and you masturbated to the point of ejaculation while the filming was taking place.

[8] The legislation is in place to, in relation to the charge of communicating with a young person and travelling to meet a young person, to protect young persons from predatory behaviour. Mr Tennet submitted to me that the fact that the target of the predatory conduct was fictitious needs to be taken into account. With respect I do not believe that makes any difference unless there had been some kind of entrapment or encouragement that resulted in your behaviour or conduct and that is not suggested here.

[9] It is the behaviour of those that involve themselves in such conduct that is the focus. You were obviously of the view that you were talking to a 13 year old girl. The communication in question was graphic in its sexual nature and made believing, as I have said, that the recipient of that communication was a 13 year old girl. Several hundred messages had been sent over the period of the week. Your intentions were clear from those messages. There is obvious pre-meditation and you went to the point of arranging a meeting with this person at McDonald's.

[10] The starting point contended for by the Crown is 12 months' imprisonment and in my view that is the minimum starting point that would be appropriate for offending of this kind.

[11] This brings me now to the objectionable image charge which attracts a much higher penalty of 14 years' imprisonment. I have been referred to the Court of Appeal decision of *R v Zhu*¹ and *R v Clode*² which both predate the increase in the maximum penalties in 2015 for charges of this kind. Reference is also made to the United Kingdom Sentencing Guidelines of 2014 for offending of this kind. Those guidelines, while not directly applicable to the New Zealand context, are of some assistance in setting starting points, but the recent increases in penalty must also be taken into account.

¹ *R v Zhu* [2007] NZCA 470

² *R v Clode* [2008] NZCA 421, [2009] 1 NZLR 312

[12] There are a number of aggravating features to that offending:

- (a) The age of the child in question, while not exactly known, it is clear that she was pre-pubescent.
- (b) There are four separate videos from filming on the same evening.
- (c) While you were filming, you were masturbating.
- (d) You were clearly engaged in the filming by instructing a person that was taking the film of this young child sleeping

[13] I agree with the Crown submission that a starting point of two years is appropriate for that offending. I think it should be cumulative on the 12 months' imprisonment I have already referred to for the other offending. I see no reason why it should be otherwise, nor do I think that offends against the totality principle.

[14] I have had the benefit of a pre-sentence report. The Crown have suggested to me that it is of some concern that you have shown little insight into your offending. Mr Tennet has endeavoured to put some of your comments in some context but it is clear that you do not yet fully understand the seriousness of your offending and the impact such offending can have.

[15] You are, of course, entitled to full credit for your guilty pleas to these charges which would reduce the overall three year starting point to one of 27 months' imprisonment. The end sentence, therefore, Mr Walsh, is a sentence of two years and three months' imprisonment.

[16] On the charge of making an objectionable video you are sentenced to 15 months' imprisonment and on the other two charges in relation to the communication and meeting following grooming for sex, you are sentenced to 12 months' imprisonment on each of those charges.

The 15 months' imprisonment will be cumulative on CRN ending 2092, giving an end sentence of two years and three months' imprisonment.

P A H Hobbs
District Court Judge