EDITORIAL NOTE: CHANGES MADE TO THIS SENTENCING INDICATION APPEAR IN [SQUARE BRACKETS].

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IN THE DISTRICT COURT
AT WELLINGTON

I TE KOTI-A.-ROHE
KI TE WHANGANUI-A-TARA

CRI-2018-091-001411

THE QUEEN

v

GRANT DAVID HANNIS

Date: 13 November 2018

Appearances: K Feltham for the Crown
P Foster for the Defendant

NOTES OF JUDGE S M HARROP ON SENTENCING INDICATION

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[l] Mr Hannis, you currently face a charge of sexual violation by unlawful sexual connection, but you have sought a sentence indication on an alternative charge of indecent assault. Clearly, that alternative charge is nevertheless serious; indeed, it is also a serious violent offence for the purposes of the Three Strikes legislation, and if you were to plead guilty, a warning would need to be given to you under those provisions of the Sentencing Act 2002.

[2] What I need to record at the outset is that you are seeking this indication entirely without prejudice to your defence of either the current charge or the possible

alternative one. But because this indication is given on the basis of what the sentence would be if you pleaded guilty, I am going to be talking about you and about the offending as if it is accepted for present purposes.

[3] The summary of facts says that you are 55 and the victim is an 82-year-old woman who is retired and resides in a care home and has done so since she suffered a stroke in 2014. She has some residual physical weakness and a limited range of motion in her left arm, and also suffers from vascular dementia, so she has mild cognitive impairment.

[4] About 4.30 pm on [date deleted] May, you were at the rest home. You had been there to visit [a relative], who is also a resident there. You visit [your relative] regularly, several times each week, and you also play in a jazz band which entertains residents at the rest home. So, you are familiar to many of the residents at the rest home.

[5] After you had visited [your relative], you walked through the dining and lounge area and saw this victim. You sat on a chair next to her and talked to her for about three to five minutes. Then, she got up and left the lounge. You left the lounge a few moments later and followed her down the hallway to her bedroom. There was further discussion in the hallway. You were slightly ahead of her when she entered the room, but you followed her into the room and shut the door behind you. You immediately approached her and started kissing and touching her. You placed one hand on her breast and the other against her vagina on the outside of her clothing and began rubbing her vagina. She attempted to push you away, but she was not able to because you were too forceful. You closed the curtains of the room so no one could see and again approached her and resumed kissing her and feeling her vagina on the outside of her clothing.

[6] A caregiver then entered and saw you in darkness close together, and switched on the light. You were noted to be red in the face. You were asked what was going on, but nobody replied. She left to find a manager. When she left, you approached again and continued to touch and kiss the victim. She attempted to push you away, but again, you were too forceful and she was not able to get you away from her. You placed your hand inside her pants and underwear and felt her vagina. You pulled your

own pants down and showed her your erect penis, and pulled her pants and underwear down. Her underpants were wet. You left the room shortly after.

[7] The caregiver returned to the room with a male nurse and found her alone, walking out of the bedroom but wearing different trousers.

[8] When you were spoken to, you admitted the activity but said it had been consensual.

[9] The Court is required on a sentence indication to consider a victim impact statement if one is available. One has been provided, but this is not from the victim herself, and that is understandable given her mental impairment or perhaps the wish of her family not to have her revisit the incident. But, there is a helpful and, I may say, sad and poignant victim impact statement from one of her daughters. And without going through all of it, it emphasises the effects this has had on her and, of course, on the wider family who have seen this change in her. The victim has become more confused since the incident. She has struggled more than previously with daily tasks. Her mobility is reduced. As the daughter puts it, "Our mum as she was has slowly drifted away." She has also had several falls and, as often happens with older people, those have had ongoing and quite life-changing consequences. She is now in a wheelchair, can barely walk, and struggles to feed herself and can no longer live with dignity and independence.

[10] Of course, it needs to be said that the extent to which that is the consequence of what you did, as opposed to her other issues, is always going to be difficult to assess. But the reality is, from the family's perspective, these things have all happened in relatively short order since [date deleted] May, when this occurred.

[11] The victim's daughter has received counselling to help her deal with the emotions and the pain she has been feeling, but she decided to stop the sessions because it was becoming too distressing.

[12] The statement concludes by saying, "You stole her rights as a defenceless woman and we ask for accountability and to take responsibility for what you have done."

[13] You have no previous convictions and you are somebody who has achieved very well in the community. You are highly respected in your position as a lecturer in journalism. It has to be said, this is unbelievable offending. It is difficult to understand and rationalise, and it is clearly completely out of character. I entirely accept the submission that this has been a dramatic fall from grace for you and that without the support of your wife, whose letters I have read and acknowledge, things would be even worse for you than I accept they already are.

[14] The way I have to go about giving a sentence indication is, first of all, to set a starting point from which there would then be deductions, in the event of a guilty plea, for the plea of guilty and for relevant personal mitigating circumstances, of which there are a number of significant ones.

[15] There is no doubt that the starting point of a sentence must be one of imprisonment, and there is, in fact, not much difference between counsel. Ms Feltham says it should be three years, and Mr Foster says it should be two and a half. Both counsel rightly acknowledge that there is no tariff for this kind of offending because there is such a wide variety of occasions on which indecent assault can occur.

[16] But, I accept the Crown submission about the aggravating features, which are obvious here. First of all, we have a vulnerable victim, not just because of her age but also because of her physical and mental impairments. There was a degree of force involved and a degree of persistence, indeed, brazenness, it might be said, in relation to the assault. Particularly to carry on after the caregiver had come into the room, speaks to that persistence. The nature of the touching is always imprisonment in indecent assault cases, and here it is at a high level as far as indecent assaults are concerned, because it is skin-on-skin contact with genitals. In addition, the victim lives in a rest home. Her bedroom is essentially her home, or the room that she spends the vast majority of her time in, so this is a form of home invasion and a significant invasion of her personal space, as well as her private space as a person, of course.

[17] Mr Foster emphasises that the incident was not lengthy (it was a maximum of 10 minutes), that there was limited premeditation, and that it should more be seen in the nature of opportunistic offending. And he properly reminds me of the need to indicate the least restrictive sentence that I reasonably can, and of course I keep that in mind.

[18] I do not propose to go through in detail the various authorities that have been referred to. Ms Feltham has referred to *Hohaia, R v Kitching, R v McCord,* and *Dayal v R* in support of her contention that this case properly sits at the three-year starting point level.[1] I accept this case is more serious than the *Kitching* case, which was a two-year starting point; considerably more serious than *McCord,* at 12 months; but also, less serious than the *Dayal* case at three and a half years. And I accept Mr Foster's submission, indeed, about that case as well.

[19] Certainly, I would say, having read the authorities, that somewhere in the range of two and a half to three years is appropriate. Mr Foster mentioned not just the *Dayal* case but a number of others and did that in support of his contention that two and a half years is appropriate as a starting point.

[20] I should say something about the case of *Berryman v* R.[2] That was a starting point of 18 months, but I note that it is a 1998 case and I think that the more recent cases provide a better view. As Ms Feltham says, they are all since the Sentencing Act came into force in 2002.

[21] In the end, there is force in the submissions of both counsel. I think a starting point of two years and nine months' imprisonment is the least restrictive that I can adopt, having regard to all the circumstances here.

[22] Obviously, if there is a guilty plea then that would be at essentially the first reasonable opportunity, and there is no dispute that you would be entitled to a 25 percent discount, credit for pleading guilty. Clearly, also, you are of previously good character, not only just because you have no previous convictions, but because of the

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[1] *Hohaia* CA 221/05, 17 October 2005; *Rv Kitching* HC Auckland CRI-2008-004-12022, 7 August 2009; *R v McCord[2013]* NZHC 3261; and *Dayal v R* [2016] NZHC 1027.
[2] *Berryman v R* HC Hamilton A 91-98, 28 August 1998.

very positive things I have read about you. When somebody of your age comes before the Court having offended not just against the victim, but also against the community, you are entitled to call to account in your favour the contributions you have made to the community. So, there is no doubt that at least a 10 percent discount for that, and 25 percent for pleading guilty, would apply. That would bring the sentence down to around about 22 months.

[23] As I observed earlier, because there have been submissions filed with significant supporting material relating to name suppression, I have a good deal more information about you than I would normally have at a sentence indication. I can see there that there are mental health consequences for you as a result of what has occurred, which would probably be given significant weight on sentence. You have also taken steps to address the issues by visiting a [counsellor]. There are two reports from a psychologist, as well, as to your fairly poor state of mental health.

[24] It is difficult to, at present, put a figure on those factors as to sentence, or the impact on sentence, but I have no doubt that they would properly reduce it to a reasonable extent.

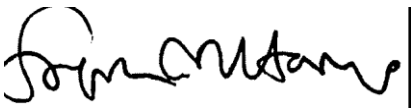
[25] If you plead guilty, there would then be the opportunity for the demonstration of remorse, the possibility of restorative justice (about which there has been some discussion today), the possibility of emotional harm reparation being paid, and there would be a pre-sentence report and, I would hope, a psychological report which might address not just the consequences of what has occurred, which the present reports have, but, rather, what may have led to this occurring. Because that informs risk in the future and also the appropriate sentence. So, there is a great deal more information, despite the level of information already, which would properly bear on sentencing and would potentially reduce the sentence to a reasonably significant degree. And as I say, I cannot really, at the moment, put any sort of figure on that.

[26] But what I can say is that the end prison sentence would undoubtedly be in the category where home detention can properly be considered, and I would have thought this is a likely outcome in a case like this. It should not be thought that it is some second-rate sentence; it is a strong deterrent sentence, and the Court of Appeal has

repeatedly emphasised that. And especially for somebody of no previous convictions, it is a significant sentence. The fact that you have no previous convictions also reinforces the likely appropriateness of home detention, because the risks to the community are very likely to be managed by such a sentence; a prison sentence is not likely to be required in terms of protecting the public.

[27] I do not think there is a great deal more that I can say today. In summary, there are a number of mitigating factors that might lead to quite a significant reduction from the sentence of about 22 months' imprisonment, or the home detention equivalent of 11 months. But that would depend on information at sentencing.

[28] One of the factors that I have already mentioned today is that if you plead guilty and there is then a sentencing, the question of whether there should be interim suppression of your name until trial will change, because there will then be no trial and it will be a question of whether there should be final suppression of your name. That is opposed by both the Crown and by the media representatives. And if the Court's decision is to decline name suppression, in my view that should be taken into account at sentencing, because publication of your name would inevitably have some adverse consequences and would represent a form of penalty before the Court imposes any sentence. So, that is another matter that I think would need to be considered at sentencing.



S M Harrop
District Cami Judge