

**IN THE DISTRICT COURT
AT MASTERTON**

**CRI-2017-035-000947
[2018] NZDC 3842**

THE QUEEN

v

DARRYN CHARLES WALSH

Hearing: 1 March 2018
Appearances: D Moore for the Crown
S Taylor for the Defendant
Judgment: 1 March 2018

NOTES OF JUDGE S M HARROP ON SENTENCING

[1] Mr Walsh, you are here for sentence on two charges to which you have pleaded guilty. The first is a not very common charge before the Court, of attempting to enter a contract or other arrangement under which a person under 18 years of age was to provide you with commercial sexual services. That is a charge which, if the offence were completed rather than merely attempted, would carry a seven-year prison term, but because it is only an attempt, the maximum penalty is half of that, three-and-a-half years' imprisonment. You are also to be sentenced on a charge of possession of a utensil, namely a glass light bulb, for the purpose of consuming methamphetamine. That carries one year's imprisonment.

[2] The summary of facts says that you are 38 and you met the [under 16 years old] girl, who comes from another town, on the evening of [date deleted] 2017 in the vicinity of the McDonald's restaurant. You raised the question of the consumption of drugs, and she agreed to go with you. You went off together in the car, where

consensual sexual conduct occurred. Before any intercourse occurred, you asked if she wanted to get paid for having sex with you; you offered her \$50, but she refused that. However, there then was intercourse between you.

[3] The car was parked in a secluded location late at night. A member of the public was concerned about that and called the police. They found the two of you in a semi-undressed state. The police were, understandably, concerned at her young appearance and removed her from the car to take her home. She told them she was 16; later, it was found that she was [under 16]. When spoken to, you said that you believed she was 19 to 20 when you first spoke to her, but that you had asked her age and she had told you she was 17. I just observe at the moment that the offence applies to any arrangement with someone under 18, so whether it was [age range deleted], I accept [the girl's age] is more serious, but in either case it is certainly a very young person and under the limit for that offence.

[4] Obviously, this is serious offending in relation to a [girl under the age of 16]. Originally, there was a charge which is, on the face of it, perfectly appropriate on the facts, of sexual conduct with a female under 16. That carries 10 years' imprisonment and, indeed, the prospect of registration under the Child Sex Offenders legislation. But of course, that charge has been replaced, and you are to be sentenced on the charge to which you pleaded guilty and of which you have been convicted, not something you previously faced.

[5] I have had helpful submissions from both counsel. The Crown rightly says that an approximate starting point of a prison sentence of about 18 months, together with a month more for the methamphetamine utensil charge, would be appropriate. But it accepts, particularly in relation to the guilty plea and all the other circumstances relating to you and the incident, that community detention and supervision would meet the purposes and principles of the Sentencing Act 2002. Mr Taylor agrees with that, and so I can keep my sentencing remarks reasonably brief.

[6] I do observe that there is a debate about the relative seriousness of the case of *Doling v Police*¹, which was referred to me by both counsel. Mr Taylor submits that

¹ *Doling v Police* HC Tauranga CRI-2010-470-12, 18 March 2010

that was a more serious case because it involved somebody looking for young girls and, I think he said, the younger the better. But, I nevertheless think this case is more serious, because here there was actual sexual connection, and even if it was consensual, there is a significant power imbalance here and age difference between the two of you.

[7] But in the end, what matters is the appropriate end sentence. I have read the pre-sentence report, which recommends community detention and supervision. It refers to your ongoing substance issue, poor impulse control, and sense of entitlement. But it notes that you are considered to be at a low risk of further offending, given the time since you previously appeared in Court. You certainly have a few convictions, none of which are directly relevant today, really, but the most recent of those relates to offending in 2006, so over 10 years ago.

[8] A positive point in the report is that shortly after the incident, you entered into a relationship with [your new partner] and you moved to live with her in [location deleted]. You have also returned to full-time employment with the company whose letter I have been given. [Your new partner] has a positive attitude to the whole thing. She is obviously disappointed in what you did, but she recognises that you have made some positive changes. So, it seems to me you are lucky to have her in your life.

[9] You have had, as you admit, an on-and-off issue with methamphetamine for, indeed, about 20 years, and you admitted that you had consumed methamphetamine before you met this girl. You are motivated, you say, to do something about this, and I note that you say that you have not consumed any illegal substances since that night back in August.

[10] You are considered to be at a high likelihood of complying with any community-based sentence. Community work is not something you can do, because of your employment. I am satisfied that community detention is the appropriate punitive sentence. I might have been more readily inclined to impose home detention, but I am influenced there by the fact that you have been on effectively a form of community detention for about five months already, so you have served a degree of

restraint and deprivation of your liberty for a lengthy period already, and I think if I add six months' community detention to that, that will be an adequate response.

[11] So on the charge under the Prostitution Reform Act 2003, you are convicted and sentenced to six months' community detention starting tomorrow, 2 March 2018. The address is [deleted]. The curfew is 8.00 pm to 5.00 am daily, so that your employment is not affected.

[12] On the other charge there will be one month's community detention but concurrent with that, so the total is still six months.

[13] On both charges, I am also going to sentence you to 12 months' supervision on the conditions set out in the pre-sentence report.

[14] I make an order for destruction of the light bulb.

S M Harrop
District Court Judge