

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN
[SQUARE BRACKETS]

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IDENTIFYING PARTICULARS, OF COMPLAINANT(S) PROHIBITED BY S
203 OF THE CRIMINAL PROCEDURE ACT 2011.**

**IN THE DISTRICT COURT
AT NAPIER**

**CRI-2017-020-003086
[2018] NZDC 7779**

THE QUEEN

v

[LEVI KRAMER]

Hearing: 20 April 2018

Appearances: S B Manning for the Crown
M M Dixon for the Defendant

Judgment: 20 April 2018

NOTES OF JUDGE B M MACKINTOSH ON SENTENCING

[1] Mr [Kramer], you appear for sentence today on a number of charges: kidnapping, sexual violation by rape, sexual violation by unlawful sexual connection, breaching protection order, threatening to kill and assault with intent to injure. Essentially, the facts arise out of the same incident, but basically it is a domestic matter and it relates to offending that occurred in October last year.

[2] On [date deleted] October 2017, you contacted the complainant who was at home bathing a baby and asked to be picked up from [address deleted] in [location deleted], so she took the [baby] with her in the car and drove to pick you up. Once you got into the driver's seat, you indicated to her that she should get in the passenger's seat and then as soon as she got in the car you told her that she had one chance to tell

you the truth and you accused her of cheating on you while you had been in jail earlier that year. She tried to ring her mother, but the phone was taken from her.

[3] You pleaded guilty earlier to assault with intent to injure and breaching your protection order. On that occasion, you pulled out a large ornamental machete out of your pants, held it in an intimidating way towards her, punched her in the side of the face and caused her nose to bleed. She was trying to undo the seatbelt, but you held the buckle closed and continued to threaten and punch her in the head and that also relates to the threat to kill.

[4] In relation to the kidnapping, you basically told her she was never going to see the children again, that you were going to kill her and take her to where no one would find her body. You threatened to show her what a real hiding was. You drove around the back roads and eventually got onto [a State Highway] where you slowed down and then demanded she get out of the car. She was trying to get out, but then you were speeding up again and eventually she got back in the car and the baby was crying. She was holding the baby in her lap in the front seat and you were driving towards [location deleted] with the machete pointed across your lap. You were punching her on a number of occasions. That was causing her head to hit the baby's head. The baby was crying.

[5] You then took her to a river near [location deleted] where you threatened her with the machete, told her to get out of the car, got a sleeping bag from the boot and laid it on the ground, told her to take off her clothing and basically raped her. You then made her perform oral sex on you and eventually made her get back in the car. The baby was there, she was begging for help, you were threatening her with the machete and eventually she was able to get away from you. You also told her to get in the boot of the car.

[6] The victim impact statement shows her distress from the incident herself. She has been the victim of serious domestic violence. As a result of the assault and the beatings, she received a number of physical injuries. It is fair to say that she was terrified.

[7] She more recently has filed another victim impact statement essentially noting now that you have accepted a sentence indication and she was relieved by that. So, in pleading guilty you have done the right thing, obviously, as far as she is concerned. She expresses enormous relief at being able to go about her daily life without having to worry about how you are going to react to what she was doing. She wants you to obviously sort yourself out and I guess way down the track would like to perhaps see that you could have some involvement in your [child's] life, but not anytime soon she says. She basically just wants to be able to get on with her life without the worry of everything that she has had in the past. As far as she was concerned, this was a terrifying episode of her life that will no doubt take her some time to get over.

[8] We had a sentence indication hearing in relation to this case and it was there that the starting points for this kind of offending was discussed. I need to just repeat that for the benefit of the sentencing notes, but as far as the sentence is concerned the starting point in relation to the sexual offending, which is the more serious, is in the guideline judgment of *R v AM*.¹ It sits somewhere between high band 2 and low band 3. There were a number of aggravating features, of course, to the offending: the premeditation, the detention, the continuous nature of the threats, the actual and physical violence, the harm to her, the scale of the offending and the degree of sexual violation. Of course, all the time she was subject to a protection order, so she was a vulnerable complainant and in addition there was the presence of the [child] throughout all of this horrific episode.

[9] I considered a number of cases, but generally in terms of *Galvin v R*² that was the more relevant case and I agreed with the Crown that a starting point somewhere would need to be in and around 12 years' imprisonment. There would need to be an uplift for the fact you were on bail on release conditions and you do have previous convictions for family violence. I uplifted to 13 years for all the other matters, gave you a 25 percent discount for your plea which got us back to around 10 years' imprisonment. I indicated that that would be the sentence of the Court, indicating possible other credits depending what was contained in the report.

¹ *R v AM (CA27/2009)* [2010] NZCA 114, [2010] 2 NZLR 750

² *Galvin v R* [2017] NZCA 22

[10] Now, this is where the discussion point has been today: whether or not there should be a further discount for remorse. In the pre-sentence report it is fair to say that you do express remorse to the pre-sentence report writer. You have expressed that you do feel “rat-shit” for what you have done and the impact that it has had on the victim. You did show some insight into the long-term consequences that this may have on her and the children.

[11] The other aspect of the report is that it seems that you were under the influence of methamphetamine for a period of time prior to this offending. You have had issues with that for a long time and have tried to do something about it but have not been able to. Hopefully, perhaps this might give you an opportunity to deal with this problem that you have.

[12] The report does describe your risk of reoffending as high and your motivation to complete rehabilitation as low at this stage. That may change, of course, during the course of your sentence, but I think probably it is fair to say that you are sorry and you have expressed some remorse today.

[13] Mr Cressey in his submissions seeks a discount of eight percent for the remorse shown to the pre-sentence report writer. That, in my view, would be overly-generous in the scheme of things, but I will give you a discount for remorse and I will discount five months’ imprisonment for that.

[14] The issue now arises as to whether or not you should be subject to a minimum period of imprisonment. Mr Cressey, on your behalf, has made a number of lengthy submissions in relation to why that should not, in fact, be imposed. The issue is whether or not in terms of the law, whether release after one third of the sentence would constitute an insufficient response in the eyes of the community, so that a minimum term of imprisonment would be required to reflect appropriate denouncement of this offending and the conduct that was involved. Also, whether or not it is insufficient to protect the members of the community and, of course, as Mr Manning rightly points out that does relate to the complainant who is, I think it is fair to say, relieved that you are in custody at the moment.

[15] Mr Cressey submits that a sentence which I am going to impose of nine years and seven months is not an insufficient amount of time to do that. He refers to the fact that you have no previous convictions for sexual offending. That that was sort of contextually related to the domestic incident. That you are not at-risk of, essentially, grabbing people off the street and randomly attacking people in that way. The acceptance that you do have a drug problem and that that is related to your lifestyle previously. The fact that you are genuinely remorseful and that you have pleaded guilty.

[16] He also makes the point that you are still relatively young at [age deleted], that you do have family who you are responsible for, that you can work and are employable and that you do have support in the community and that once you are released other issues are better addressed outside prison through parole conditions. He submits that the threat hanging over your head of being able to be recalled to prison whilst on parole would be sufficient deterrence from any further offending.

[17] I take the view that in terms of this kind of offending, due to the horrific nature of it, due to that a minimum period of imprisonment is required essentially to denounce this kind of conduct. I also take the view that a minimum period of imprisonment is required to protect the complainant in this case. I intend to impose a minimum period of imprisonment of 50 percent so that will be served before you are eligible for parole.

B M Mackintosh
District Court Judge