

**IN THE DISTRICT COURT
AT INVERCARGILL**

**CRI-2016-025-002323
[2018] NZDC 4205**

THE QUEEN

v

[MATTHEW HOPE]

Hearing: 6 March 2018

Appearances: K Allan for the Crown
F Guy Kidd for the Defendant

Judgment: 6 March 2018

NOTES OF JUDGE K J PHILLIPS ON SENTENCING

[1] Mr [Hope], you are for sentence before me today on four charges, of which you were found guilty by your jury following a jury trial before me as the presiding Judge. They are three charges of sexual violation by unlawful sexual connection and one charge of committing an indecent act on a young person.

[2] The evidence before the jury, in my view, was clear and really unequivocal. In order to sentence you, I need briefly to outline the reason why I must send you to prison for a lengthy period of time and I think you understand that. I note that you do not accept the jury's verdict. That matter will move somewhat further before there is a finality but I have to treat the verdict of the jury as the basis today for your sentencing and I will do so.

[3] The victim was born on [date deleted]. You married the victim's mother in [year deleted]. You lived with the victim, your wife and your own children in a family

group from [year deleted]. You played the role in that family group of the victim's father.

[4] Your jury has found that on three separate occasions, (I should note that charges 2 and 3 were representative charges), you sexually violated her. Charge 1 relates to when you were looking after her at the home in [location 1]. There was some discussion about your requirement for her to have "fresh air" on her genitalia; you putting your fingers on her legs and thigh and then touching her vagina and inserting your fingers into her vagina. You took your finger out, spat on it and then re-inserted it into her vagina. This was in the period between 2013 and 2014. She aged [under 12] or thereabouts.

[5] Charge 2 is a representative charge relating to offending at [location 2], when you and her were [away], you staying in a [details deleted]. It was April of 2014. She was in her night clothes. You required her to lie down and spread her legs. You knelt in front of her, put your fingers on her legs and thighs, spitting saliva on your fingers and put your finger into the vagina. That occurred on each night you were there.

[6] On charge 3 in May of 2016 at [location 3], [details of trip deleted], you were [details deleted]. She was in her night clothes. You inserted your finger into her vagina, asking her questions as to whether it was "nice". She said, "No". You continuing each of the nights you were at [location 3]. On one occasion exposing yourself as well.

[7] Charge 4 relates to an offence of indecent act at [location 1] where you required her to lie on a couch with her legs open. You were touching the outside of her vagina.

[8] Briefly put, they are the basis of the findings of the jury.

[9] I have a Victim Impact Statement. She is now [age deleted] but was [under 14] when all of this was happening. She has described it in her Victim Impact Statement as, "absolutely disgusting acts which should have never happened". She said that she trusted you and that the actions by you on her have majorly impacted upon her ability to trust anybody. She gets flashbacks; has had to receive counselling; and she recalls

you saying that if she told anyone, you would go away for a long time and that her mother would be very unhappy about that. She has on occasions been scared. She has made it very clear she never wants to see you again.

[10] Her mother, (your wife), in her Victim Impact Statement has pointed to your large involvement in her daughter's upbringing and how this offending proven against you has totally changed her life. She has found it all incredibly stressful and difficult and has attempted to get things back to normal but continually sees the impact of the offending upon her daughter. She has lost her self-confidence. She tells me in her Victim Impact Statement that she finds it extremely difficult to trust anyone.

[11] In order to get to a sentence Mr [Hope], I have to rely on the authority of a Court of Appeal tariff decision called *R v AM*.¹ I am quite sure Ms Guy Kidd, knowing her professionalism, would have discussed that would you. There are bands set for this sentencing and I have to assess where your offending lies, within an overall band.

Crown

[12] The Pre-Sentence report says that you considered, and still consider really, your relationship with the victim to be normal. You deny the offending and therefore there cannot be any remorse or credit for remorse.

[13] Ms Allan for the Crown has provided me with written submissions which have been helpful, noting the various aggravating factors that I have to have regard to in arriving at an appropriate position for your sentence. The first point that I should make is your prior offending relates to dishonesty, alcohol and violent offending. Nothing of any similar matters.

[14] Ms Allan has pointed to ss 7 and 8 Sentencing Act 2002: accountability, responsibility, denunciation and deterrence, the interests of the victim of the offence. In the terms of *R v AM*, it occurred over a two to three year period. In the view of the Crown, a high level of planning and premeditation; a very vulnerable victim; the harm

¹ *R v AM* [2010] NZCA 114, [2010] 2 NZLR 750

that I have described from the Victim Impact Statement; there was one victim; one type of act complained of; the breach of trust was the most significant factor. With five aggravating factors, it falls in the upper end of Band 2 of *R v AM* with a starting point of between four and 10 years.

[15] A number of authorities are mentioned by her such as *R v Pavlovich*², *R v Botha*³ and *R v Aleki*⁴ all of which I have read and brought to account within my assessment. The submission for the Crown is a starting point of some nine years' imprisonment.

Defence

[16] In relation to the argument put before me by Ms Guy Kidd for you, she points out that, in all, upon the Jury's verdict your being found guilty on six separate acts of sexual violation. She does not accept the submission of high-level planning and premeditation. She notes that there were other [trips] where there was no complaint made of sexual violation. She says that the victim was [a teenager] at the time. I make the point that here the ages are clearly set out in the various charges within the Charge List. The basis for the age is detailed in the charges themselves.

[17] She notes there was no actual physical harm. That the scale of the offending, when one looks at the time period of two years, is less than some of the authorities Ms Allan has mentioned. She accepts the breach of trust argument. She also accepts that it is Band 2 *R v Taueki*⁵. But at a lower level than the Crown. A period of four to seven years within which the sentence starting point should be put.

[18] She makes a point of an authority of *R v Kay*⁶ where there were 50 violations, where the starting point was between six to six and a half years. She has mentioned that and said that, if one has regards to the starting point in *R v Kay*, the nine year

² *R v Pavlovich* [2014] NZCA 88

³ *R v Botha* [2015] BCL 230

⁴ *R v Aleki* [2014] NZCA 473

⁵ *R v Taueki* [2005] 3 NZLR 372 (CA) AKA *R v Ridley, R v Roberts*

⁶ *R v Kay*

starting point on behalf of the Crown is excessive. She also discusses those three authorities that I have mentioned that Ms Allan has put to me.

[19] I have considered all of those submissions, to arrive at what I consider the appropriate end-point for your sentence. I, for the purposes of the sentence that I am now to impose upon you, am imposing a sentence on the basis that the representative charge 2 is the head or lead charge, being a representative charge.

[20] I considered *R v AM* and the banding within that case. Band 2 is for relatively moderate seriousness with two to three of the culpability factors taking culpability to a moderate degree. When I read the transcript, (being the notes on evidence called at your trial), I consider there was planning and premeditation to a moderate level. You were making requirements and requests of the victim. You were taking her on the trips knowing I think, when you did so, what would be happening at night. Vulnerability, I consider her to be highly vulnerable taking into account her age, your age, your relationship, and the fact you were alone together. When I put all those together I consider vulnerability is established to a moderate level.

[21] I accept Ms Guy Kidd's submission there was no physical harm as such. The psychological harm can be just as bad, if not worse, than physical harm. With a girl of this age at that time of her life and maturity, this type of offending, one would expect ongoing impact to a high degree upon the victim. I have assessed harm at a moderate factor.

[22] The breach of trust is a high factor. You were her stepfather. She trusted you, her mother trusted you. You breached that trust time and time again.

[23] So in the end, in my assessment we have one aggravating factor to a high degree, two to a moderate degree and one up to a moderate level. The sentencing band, therefore, in my view is between four and 10 years' starting point.

[24] I consider, when I assess all of those factors, it falls within the middle of Band 2. The starting point that I arrive at overall for your offending is seven years' imprisonment. There are no personal aggravating factors. There are no personal

mitigating factors. The end result of that is that the starting point is the end-point. I am sentencing you on the basis, therefore, on charge 2 to a term of imprisonment of seven years; on charges 1, 3 and 4 you are sent to prison for a term of four years, those terms to run concurrently.

[25] As I said at the beginning, I accept here that in the terms of s 200 Criminal Procedure Act 2011, if your name was published your sins would be visited on your own children at a time of their lives when are going through a difficult enough period because of where they know their father is. I do not consider that should be further highlighted by your name being published to their detriment. You, being the perpetrator of these acts upon your stepdaughter, deserve no consideration. They are innocent, and they do. I find extreme hardship on that basis and that basis only.

[26] I make a final order for suppression of your name.

K J Phillips
District Court Judge