

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 AUCKLAND**

**CRI-2017-004-008113
THREE STRIKES WARNING
[2018] NZDC 4269**

THE QUEEN

v

[CARL DUFFY]

Hearing: 7 March 2018
Appearances: H Steele for the Crown
L Burns for the Defendant
Judgment: 7 March 2018

NOTES OF JUDGE C J FIELD ON SENTENCING

[1] Mr [Duffy], you have pleaded guilty to eight charges of sexual violation comprising violation in a number of forms, which I will not repeat now, and three of indecent assault. I start by acknowledging the presence of the parents of the victim in Court today, and I have listened carefully to [the victim's father's] reading of his victim impact statement and I want him and the family, and in particular [the victim], perhaps, to know that I have taken this very much into consideration when I deal with Mr [Duffy] today. For what it is worth, I express my sympathy to the family for what they have been through.

[2] Now, the aggravating features of the offending were mentioned by me at the time of the sentence indication and the way in which the facts of this case fit with the

leading Court of Appeal judgment in the way the Court should deal with cases of this kind. I think I should repeat the aggravating features which led me to indicate a starting point of 16 years which I acknowledge is a significant length of imprisonment and merited in terms of what you have done to [the victim] and to the family. She was 16 years of age I think at the time. The young girl has an intellectual age of perhaps 10 to 12 years and you were aware of this. I do not accept that this had not been made clear to you at the time that you were there at the address.

[3] The offending, as I say, took various forms and lasted for a period of approximately 12 months. At least one of these charges was a representative charge and referring back to [the victim's] victim impact statement she remains affected by this and will continue to do so, I have no doubt, for the rest of her life as well as her family. She of course was very vulnerable and her vulnerability in these circumstances is something that the Court recognises and is a significant aggravating feature of the offending. Breach of trust, certainly the family trusted you to behave appropriately towards their daughter and I do note, as I have said before, that this is not a question of you moving from one restrictive society to a more permissive one. [Details deleted], so you are not moving from a restricted environment to a permissive one.

[4] I think I mentioned in the course of my sentence indication this had been a catastrophic event for the family and for the complainant herself. I think that I have adequately summarised the circumstances which led me to indicate a starting point of 16 years' imprisonment having regard to the totality of the offending and that of course has been accepted by you in terms of your plea, and I indicated a deduction of 20 percent which I will come to in a moment.

[5] The issue is what allowance can be made for any personal mitigating features that there might be. I do think it is appropriate to allow a modest deduction for your previous good record and to a more limited extent your age, as Crown counsel points out, that you are not a teenager who has committed one or two impulsive acts. You were more mature than that and this offending occurred over a significant period of time and on a repeated basis. So that there can be little deduction made for youth but you do not have any previous convictions and that must be recognised. I think a combination of an allowance for your previous good record and something for your

youth perhaps would justify a deduction of say one year from the starting point. That would leave an available sentence of 15 years, from which I will deduct three years for your plea. That leaves an effective sentence available of 12 years' imprisonment which is a significant sentence even allowing for parole period.

[6] The Crown asked me to impose a minimum period of imprisonment and in that regard I refer to s 86 Sentencing Act 2002 where the Court may impose a minimum period longer than the parole period otherwise applicable if I am satisfied that period is insufficient for the purpose of holding you accountable for the harm done to the victim and the community, denouncing the conduct in which you were involved, deterring you or others from committing the offence and protecting the community from you. All of those conditions of course do not have to come into play. The Court can have regard to all or any of them. Clearly I have had regard to the need to hold you accountable and denouncing the conduct.

[7] The reality of the situation is that when you are eligible for release you will be immediately deported, whenever that may occur, and I do not think that this is a case where the community needs to be protected from any further offending by you because you will be deported. Further, I consider that issues of deterrence and denunciation can and have been adequately met by the end sentence which I am about to impose.

[8] In all of the circumstances, whilst I have listened carefully to the submissions of the Crown, I do not intend to impose a minimum period of imprisonment. You will serve a substantial period of imprisonment in any event and you will then be deported. In these circumstances then I deal with you in this way.

[9] On each of the charges of sexual violation, you are sentenced to imprisonment for a period of 12 years.

[10] In respect of the other charges of indecent assault, you will be sentenced to imprisonment for a period of five years. Those will be concurrent of course with the 12-year period.

[11] I now administer the strike warning which I am required to give you. Given your convictions for sexual violation and indecent assault, you are now subject to the three strikes law. I am now going to give you a warning of the consequences of another serious violence conviction. You will also be given a written notice outlining these consequences which lists the serious violent offences.

[12] If you are convicted of any serious violent offences, other than murder, committed after this warning and if a Judge imposes a sentence of imprisonment, then you will serve that sentence without parole or early release. If you are convicted of murder committed after this warning, then you must be sentenced to life imprisonment. That will be served without parole unless it would be manifestly unjust. In that event, the Judge must sentence you to a minimum term of imprisonment.

C J Field
District Court Judge