

NOTE: PUBLICATION OF NAME(S), ADDRESS(ES), OCCUPATION(S) OR IDENTIFYING PARTICULARS, OF COMPLAINANT(S) PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011.

**IN THE DISTRICT COURT
AT DUNEDIN**

**CRI-2015-012-000576
[2016] NZDC 4029**

THE QUEEN

v

WILBUR MORRIS

Hearing: 2 March 2016

Appearances: C Power for the Crown
C Savage for the Defendant

Judgment: 2 March 2016

NOTES OF JUDGE B P CALLAGHAN ON SENTENCING

[1] Mr Morris, who suffers from a diagnosed and established intellectual disability, but was fit to plea and engage in the Court process, pleaded guilty to an indecent assault on a Ms Kent who was at the time a co-resident with the defendant under the care of the Community Care Trust in Dunedin. The indecent assault occurred on a park bench, I am told by Mr Power this morning that it was at a bus stop. But whether it was a park bench or at a bus stop, or both, the offending in the public arena at 1.00 pm on a Friday, probably says quite a lot about the defendant's disability as well as anything else. That is not to minimise the effect upon the complainant, Ms Kent, whose name of course is automatically suppressed from publication. The consequences for her have been quite diabolical in respect of

issues she has to continue to deal with, and there is no real issue taken with that. So, I am very conscious of the effect on her.

[2] I am also very conscious in dealing with this sentencing as to the effect on the public generally, given that the defendant has shown, although not for some years, a propensity to offend in a similar matter, and I am talking about sexual offending in 1984 and 1980 in particular. As I mentioned earlier in the hearing, it does appear that the sexual offending seems to be directed towards either young or vulnerable people.

[3] Mr Morris has, having said that, been able to remain in the community since 1984 without any offending whatsoever. It seems quite clear during the period of time that he has had established relationships with female partners that there has been no offending, and it is sad to read that he lost a wife not long after they were married in the past.

[4] The sentencing options open to me, of course, are to treat the defendant as a normal offender and the likely outcome must be a starting point of a sentence of imprisonment, or deal with him as I am able to now under the Criminal Procedure (Mentally Impaired Persons) Act 2003 on the basis of making him a care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, which is the submission made and the option put fairly and squarely before the Court.

[5] Mr Power for the Crown has quite rightly identified the seriousness of the offending, although as I have said it is to be noted that it was offending in the public arena which, I just reiterate, says probably as much about the defendant's disability as anything else. It was not a secretive type of offending. Mr Trainor, psychologist, has concluded that the defendant has an intellectual disability and that the recommendation prepared in the plan by the compulsory care co-ordinator is that there be a compulsory care order made, directing that the defendant be cared for as a care recipient in accordance with the plan. It is not seen as necessary, nor have the Crown pursued this, that he needs to be cared for as a secure care recipient.

[6] I have read the detailed plan and it seems to me to cover all the possibilities and also to cover the protection of the public generally and also assist with this 60 year old man's rehabilitation. Again, I bear in mind the seriousness of the offending and I am satisfied, having considered all matters, that the appropriate outcome is that there be an order pursuant to s 34(1)(b)(ii) Criminal Procedure (Mentally Impaired Persons) Act 2003 that the defendant be cared for as a care recipient for a period of 18 months in accordance with the care plan that has been produced, which is approved

[7] As I have noted with counsel when I talked about the length of the term of the order, there is provision in the legislation, in any event, for the order to be extended.

[8] So, Mr Morris, there will be an order made as I have directed that you be cared for as a care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

B P Callaghan
District Court Judge