

**IN THE DISTRICT COURT
AT MANUKAU**

**CRI-2015-092-004451
[2016] NZDC 4250**

THE QUEEN

v

REWI JOHNSTONE

Hearing: 14 March 2016
Appearances: L Clancy for the Crown
D Wallwork for the Defendant
Judgment: 14 March 2016

NOTES OF JUDGE G T WINTER ON SENTENCING

[1] Mr Johnstone, you appear for sentence having pleaded guilty to one charge of sexual violation by rape and two representative charges of sexual violation by unlawful sexual connection. The maximum penalty on all of those charges sir, is 20 years' imprisonment.

[2] The summary of facts is extensive and for the record I will have a copy of the summary of facts attached to my sentencing notes. You agreed with the facts. In brief terms you sexually offended against your daughter on hundreds of occasions when she was aged between nine and 15. The abuse generally consisted of you putting your penis into her mouth, including ejaculating in her mouth and, penetrating her genitalia with your fingers.

[3] On [date deleted] at a time when your daughter had turned 15 years of age, you raped her in a wash house at the family home. That rape involved you making her bend over by forcing her head forwards and downwards. As you held her head to

stop her moving you put your penis into her vagina. Afterwards you said to her in a threatening way, "If you tell anyone, I'll smash you."

[4] You are married, aged 31 years, and unemployed.

[5] I have read the very thoughtful pre-sentence report. You have reviewed that with your learned defence counsel. You accept that a sentence of imprisonment is inevitable and your counsel has explained to you the way in which a Judge will calculate the number of years that you must be sent to jail to meet the purposes and principles described in the law that tells a Judge how he or she must sentence someone. That law is called the Sentencing Act 2002.

[6] The purposes of sentencing set out in s 7 of that Act that are relevant to your case are to hold you to account for the harm done to your daughter, to promote in you a sense of responsibility and obtain from you an acknowledgement of the harm that you have done. To provide for the interests of the victim, your daughter, to denounce the conduct in which you were involved with her, and to deter you and others from committing similar offences. I have to keep in mind the need to protect the community from you.

[7] Protection of the community and denunciation of this type of sexual offending are most important however, they cannot override other considerations. I have to take into account the fact that there must be a reasonable relationship between the penalty that I impose under those principles and the gravity of the offence, and your circumstances in particular taking into account the gravity of offending including your degree of culpability. I have to also consider the seriousness of your offending in comparison with other types of offences. I have to keep in mind therefore the need to impose a sentence that is consistent with appropriate sentencing levels for similar offending, and I have to take into account the effect of the offending on the victim. I also keep in mind the need to observe the principles of imposing a sentence that reflects the least restrictive option of sentence upon you and respects the principle of totality.

[8] In any sense of it, this was gross long-term offending against your daughter. The aggravating features that I find are present in your case are the extreme vulnerability of your child. She was inherently vulnerable as your daughter. This

offending largely occurred in her home, a place where she was entitled to feel loved and safe.

[9] I have to keep in mind the scale of the offending and that is best judged by the number of years that you indulged yourself. The offending occurred in her simple description, “Hundreds of times,” and occurred repeatedly over a long period of time from when she was nine until she was just over 15.

[10] There is the obvious great abuse of trust by you, you were her father. There is the harm to her. It is well known that serious sexual offending by a family member causes great harm and damage. The words of a victim impact statement are really only amplified by what we know of that harm. Apart from the physical damage that is done, the great emotional and psychological damage you have put upon your daughter will take many years to address and for her to come to terms with.

[11] Both your learned counsel and the Crown have provided me with excellent written submissions. They are not far apart on their view about what has to happen to you today. That is because a Court higher than mine, the Court of Appeal, has provided Judges like me with guidance for sentencing particularly in rape cases. There is a decision of that Court known only as *R v A M* [2010] NZCA 114 that talks about bands of offending. In your case the relevant band is in my view the top end of band 2 and the low end of band 3. That is a band that describes an appropriate scale of offending where there are levels of violence and premeditation that might in relative terms be seen as moderate, and two or three aggravating factors might increase that culpability.

[12] This I find was serious offending involving at least two or more factors so I do find it to be at the top end of band 2 and the bottom end of level 3. Given those aggravating features, particularly your daughter’s age, the nature of your relationship with her and the repeat offending over a number of years, I am satisfied that a consistent starting point when compared with cases such as *R v Toa* [2014] NZHC 2279 and *R v Penman* [2015] NZCA 364 is one of 14 years’ imprisonment.

[13] There is little that can be said in mitigation. I know that you have started a very long journey to embrace the necessary psychological counselling and rehabilitation that you require to address this extreme frailty that you have of sexual preoccupation with this child. I know that you have written me a letter which I have read and I know that letter expresses remorse but, such is the depth of your feeling and such is the stage of your rehabilitation that you are at, that I cannot and will not allow a deduction for a separate consideration of remorse.

[14] I am satisfied that the prime deduction that can be made from that 14 year sentence is a term of three and a half years which would end with a sentence of 10 years and six months.

[15] I have considered the principles of totality and the need to impose a sentence that respects the least restrictive option and I am satisfied that a consistent and principled sentence is therefore one of 10 years and six months' imprisonment.

[16] I say for the purposes of the Parole Board, that your report contained in the provision of advice to Courts dated 10 March 2016 has some insightful remarks about your current cognitive distortions which became apparent during the interview, where you tried to justify your offending behaviour by redirecting the focus to external factors such as financial difficulties, lack of employment, arguing that they were the catalyst for your sexual offending. It would be my hope that the Parole Board and the prison authorities, by the skilful use of departmental psychologists attached to the child sex offenders units, might be able to examine those distortions and work with you to a long-term treatment and risk management plan so that the community can be assured of their safety when you are eventually released.

[17] The sentence of the Court is therefore one of 10 years and six months.

[18] There will of course, be the concomitant suppression of both names.

G T Winter
District Court Judge