

**IN THE DISTRICT COURT
AT MANUKAU**

**CRI-2015-092-004590
[2016] NZDC 4595
THREE STRIKES WARNING**

THE QUEEN

v

MICHAEL LETUFUGA

Hearing: 18 March 2016
Appearances: N Dobbs for the Crown
D Wallwork for the Defendant
Judgment: 18 March 2016

NOTES OF JUDGE R J EARWAKER ON SENTENCING

[1] Mr Letufuga, you have pleaded guilty to one charge of sexual conduct with a young person, and that is a crime pursuant to s 134 Crimes Act 1961. The maximum penalty for that offence is 10 years in prison.

[2] In terms of the background to the offending, that can be stated quite simply and that is from the agreed summary of facts. The victim at the time was 14 years old. She had been under Child, Youth and Family's care, although I do accept that there may not have been any knowledge of that from your part but, on 3 July 2014 she left her carer's address at around 8.30 pm and travelled to [location deleted]. Some time that evening you drove your silver Subaru station wagon to that area, you stopped and spoke to the victim, she got into your vehicle, you drove to another location and while you were parked in that car you licked the victim's breast, you got her to perform oral sex on you, and you penetrated her vagina with your fingers.

You then subsequently dropped her off to the Otahuhu bus depot. She had made a complaint that evening, she was medically examined and the doctor observed small bruises inside her vagina and a small bleeding cut to her hymen.

[3] There is no victim impact statement at all so I am reliant upon the information that has been placed before me by the Crown in their submissions, which I have read.

[4] Both the Crown and your counsel Ms Wallwork, have filed extensive written submissions, which I have considered, which sets out all of the circumstances about the offending, about the victim, about you, and also gives me case law to assist me in terms of arriving at an appropriate sentence for you.

[5] I have considered the pre-sentence report dated 3 March and note the contents of that. You are now 40 years old, at the time I think you were 39. The victim was 14 years old. It is accepted through your counsel that you knew she was under age and she looked under age. She was at the time in the red light district.

[6] You have been in a long-term relationship since 2002 and have two children and, I understand from the pre-sentence report, that your partner is standing by you. I will come back to some of those aspects in the pre-sentence report shortly but I do note that you do have numerous previous convictions dating back some years. You have got convictions for violence offences including aggravated robbery, assault with a weapon, male assaults female, assault charges and, also you have a conviction for rape in 1994 when you were 18 years old. The victim in that case was 13 years old.

[7] As I have said, the Crown have referred me to relevant principles and purposes for sentence, and a number of cases which they say are appropriate for me to consider. The Crown point to a number of aggravating features including the vulnerability of the victim, the disparity in your age (at the time you were 39 and she was 14). Although the Crown accept there is no tariff or guideline judgments from higher Courts like the Court of Appeal, they submit on the basis of what they have attached to their submissions an appropriate starting point is two years and nine

months with an uplift of three months for previous offending, taking it to three years. They acknowledge that with your early guilty plea, a 25 percent discount is appropriate.

[8] Ms Wallwork in her submissions has also referred to the purposes and principles of sentencing, has given me some background on you, and also provided me with some additional authorities. On the basis of that she submits that a starting point of some two to two and a half years is appropriate with an uplift of three months, and also with a 25 percent discount.

[9] In sentencing you I do need to consider the purposes and the principles of sentencing. In doing so, I am required to hold you accountable for the harm done to the victim and also to promote in you a sense of responsibility for that harm and acknowledgement of that harm. Also, I am required to denounce your conduct and also to deter you, that means to stop you and people in similar positions to you from offending in this way. Also, I am required to consider protection of the community but, at the other end to assist you in your rehabilitation and reintegration.

[10] In terms of the principles of sentencing, I must take into account the seriousness of the offence, the gravity of it, and also must take into account consistency of sentencing for like cases, so for similar cases to yours. Also, take into account any information provided to me on the effect of your offending on the victim. Also, I am required to look at the least restrictive outcome that is appropriate in the circumstances.

[11] So I am required to look at all of those factors when I consider the sentence to impose upon you and I need to fix an appropriate starting point, and then look at any aggravating or mitigating factors relating to the offending.

[12] Considering the aggravating factors, I do consider I must take into account the vulnerability of the victim. She was only 14 years old and it is accepted as I have said that you knew she was under age and she looked under age. She had particular issues which made her more vulnerable and that was because of her history in Child, Youth and Family care and some matters which were particularly relevant to her.

But, I do accept that you would not have known about those factors but, nonetheless the fact that she was only 14 years old and you knew she was under age, alone at night in that district means that she was particularly vulnerable and that is an aggravating factor I have to take into account.

[13] The disparity of age, she was only 14 and you were 39, I need to take that into account. It is only one occasion, which I take into account, and the harm to her and as I say she was examined by a doctor and did have some small bruising.

[14] There are no mitigating factors relating to the offence.

[15] So when I consider all of those factors including the authorities that have been referred to me, I agree with the Crown that this is a case that falls almost squarely within the decision of *Faapuea v R* [2010] NZCA 20, where the Court considered that a starting point of two years and nine months was appropriate.

[16] In looking at that starting point I do need to look at what the Court of Appeal has said in terms of these types of offences where there is no tariff or guideline judgment. But, the Court has said that young girls who consent to sexual activity with considerably older men frequently become disturbed when they reach an age where they have full understanding of what they have been involved in. So there is a real need to deter adults from having sex with children or being involved sexually with children, and so that is one of the factors that I do need to take into account.

[17] So I do fix the starting point at two years and nine months. Looking at your previous offences I consider that an uplift of three months is appropriate which takes me to a sentence of three years' imprisonment.

[18] Looking at any factors I might give in terms of a potential discount, things often are considered such as remorse, those types of matters and I accept what the Crown say that I am not able to give you any discount for that. It seems, looking at your pre-sentence report, that you do not have any remorse relating to the victim. In fact, it seems that you are really attempting to shift the blame to her where in the pre-sentence report it says she took money for sex, that made her a working girl at

the time and you have indicated that. The assessment of the pre-sentence report-writer was that really you did not express any genuine remorse for the offending rather, really expressed disappointment for yourself and your own predicament. Your risk of re-offending is assessed to be high given the matters that are addressed in the report, particularly the matters referred to where you are prone to frequent areas such as this where working girls are.

[19] So looking at those factors, I do not consider any discount is appropriate for matters other than your guilty plea and for that I do give you a 25 percent discount, which is nine months, which brings me to an end sentence of two years and three months' imprisonment.

[20] As I said to you Mr Letufuga, I have given you a discount for your guilty plea, I have acknowledged that you have pleaded guilty at an early opportunity which entitles you to a 25 percent discount. So what I have done is fixed the starting point which is what the law requires me to do at two years and nine months. I have then increased that, so given an uplift because of your previous offending and that is an uplift of three months which takes me to a sentence of three years' imprisonment. From that three years, I then deduct the 25 percent for your guilty plea which is nine months and takes it down to an end sentence of two years and three months' imprisonment. So I have made that deduction for your guilty plea. Do you understand that?

[21] So that will be the sentence of the Court, two years and three months' imprisonment.

[22] I am required because of the nature of your offending, to give you a three strikes warning and I do that now.

[23] I have convicted you and now sentenced you to two years and three months' imprisonment and given your conviction for the charge of sexual conduct with a young person you are now subject to the three strikes law. I am going to give you a warning of the consequences of another serious violence conviction. You will be

given a written notice which sets all this out but I am required to tell you in open Court as well. That written notice will list what the serious violent offences are.

[24] But, if you are convicted of any serious violent offence 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 without early release.

[25] Secondly, 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.

[26] Your counsel will explain what that warning means in more detail to you but I am required by law to give you that first strikes warning and that will now be recorded on your record.

[27] All other charges ending 559, 2869 and 2870 have been withdrawn.

R J Earwaker
District Court Judge