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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 CHRISTCHURCH**

**CRI-2015-009-004347
[2016] NZDC 3448
THREE STRIKES WARNING**

THE QUEEN

v

THOMAS BARRETT

Hearing: 2 March 2016
Appearances: A Williams for the Crown
N Rout for the Defendant
Judgment: 2 March 2016

NOTES OF JUDGE J A FARISH ON SENTENCING

[1] So for everyone that is in Court. Some of you may not be aware that I saw Mr Barrett on 20 November of last year and I gave him what we call a sentence indication and at that time I had access of course to the whole file. I had read through the allegations, I knew what the nature of the allegations were. I also had access to written material filed by Mr Barrett's lawyer, Mr Rout, and also on behalf of the Crown from Mr Williams.

[2] I also had access to the two victim impact reports, from the two principal mothers of the two complainants. What I did not have was a pre-sentence report and I did not of course have the two victim impact reports in relation to and I am not

doing this disrespectfully, but we refer to the victims to afford them privacy by their first initials, so I refer to them as AW and LH.

[3] I have received those now and the purpose of giving a sentence indication and seeing Mr Barrett on 20 November was to tell him the sort of sentence, the length of sentence that he would receive, if he was to plead guilty. And I told him that in light of the seriousness of the offending, there is a Court of Appeal decision called *R v AM* (CA27/2009) [2010] NZCA 114, [2010] 2 NZLR 750, which is what we call a tariff case and that tells me as a Judge that if the offending is at a certain level and in this case it was very serious, with multiple victims, having a huge effect upon not only them but the ripple effects in relation to their family and I am going to return to that in moment, that I saw a starting point of 14 years' imprisonment as being appropriate.

[4] In terms of the sentencing exercise that is also prescribed by statute and also by Court of Appeal decisions, I then had to determine whether or not there was an increase in that sentence because Mr Barrett does not have any prior convictions of a similar type, there was no need for me to uplift that sentence. So I started at 14 years' imprisonment. From that, as a matter of law, I have to give him credit for a guilty plea. It is a Supreme Court decision called *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 and as a matter of law, given the very early plea of guilty which is an indication of remorse which has been evident since he was first arrested and interviewed by the police, I gave him 25 percent credit which is in accordance with the Supreme Court decision.

[5] There was also some further remorse that I had to give him credit for; the fact that up until his arrest he had otherwise been of good character, although I acknowledged at the time that I gave him that credit that he had been living somewhat of a lie for some time, given that he had been offending against these young ladies. So the credit was the minimum really that I could give him which was five percent, but the character references that I have had referred to me, not only then but today, indicate that in all other aspects of his life he was actually doing all right but there was this aspect of his life which was seriously obviously wrong.

[6] In addition, I received other material that indicated that Mr Barrett was genuinely remorseful over and above his guilty plea and it was evident from the police interview and also evident from the material that I had placed before me in Court. So I gave him a further five percent, so it was a 35 percent discount off the 14 years. And on that basis after some time, five days, Mr Barrett accepted that sentence indication and as I said to him when I gave that sentence indication to him, that I was bound by that, that once I gave that indication I cannot change my mind as to the appropriateness or not of that sentence indication. The only thing I could do is if there was some further material available, then I could maybe give him some further credit.

[7] I also indicated to him at the time and I am going to read to you what I said about the effects upon the victims because, at that stage as I said to you, I did not have all of the victim impact reports and at paragraph 18 of my decision, it went for quite a few pages, I said this as far as the two main complainants are concerned:

As I said, I do not have victim impact reports from these young girls but I can generalise the effects upon them of your offending. It isolates them. It isolates them out at such a young age that such terrible things have happened to them. It really makes them so much more vulnerable as they are growing up because the trust that they placed in you as an adult, someone they were told to look up to, who they did look up to has been breached in such a significant way. It also isolates them out from their [relationship details deleted]. So they not only become isolated from their mothers but they also isolated from their peers because this is not the sort of thing that you can't discuss with other people. For AW in particular, she will not be able to tell her friends that is why she is so sick is because she has contracted a sexually transmitted disease. It is a shame that she will have that with her for the rest of her life and it is going to take a considerable amount of help and assistance for her to get over that shame and be able to confront it and deal with it and that is just the tip of the iceberg in relation to the effects of your offending upon these two young girls.

[8] Now those words were strangely prophetic because I have now had access to the two victim impact reports which were conducted by a clinical psychologist. They emphasise that for both AW and LH they have become isolated, not only in relation to their peers but also from their families. When I read through, in particular AW's victim impact report, it highlighted for me that there is obviously another victim in all of this and that is [relationship details deleted]. His life is also marred

by your behaviour Mr Barrett. [Relationship details deleted]. So that is another victim in relation to this offending.

[9] I am not going to increase the sentence though, as I said I am bound by the 14 years that I gave you. What I did advise you of though is when I saw you on 20 November is that I do have to give you a first strike warning in relation to your offending and that is because you are now subject to the three strike legislation. So given your convictions today, you are now subject to the three strike law. I am going to give you a warning as to the consequences of another serious violent offence after today's date. It is such a serious warning that you will get a copy of it in writing and annexed to the warning are a list of offences that are deemed serious violent offences. So if you are convicted of a serious violence offence other than murder, after today's date that any term of imprisonment you will serve will be without parole or early release. If you are convicted of murder, committed after this warning, then you must be sentenced to life imprisonment and again you would serve that without parole unless a High Court Judge deemed that that would be manifestly unjust. In that event a Judge in the High Court must then sentence you to a minimum term of imprisonment. As I said, you will get a copy of that warning in writing.

[10] I am not going to read out the rest of my sentence indication. It traversed all of the facts of your offending, which as I indicated to you was serious and grave and an appalling breach of trust by you in relation to both of these young ladies who were placed in your trust [relationship details deleted].

[11] As I said, it was a 14 year starting point. I would give you credit of 35 percent. I am going to reduce it just slightly by one month so the end sentence will be one of nine years' imprisonment. I am not imposing a minimum non-parole period on you, given that you are a first offender. I agree the sooner you undertake some treatment in relation to your offending, the better and it will be for the Parole Board to determine when that should occur and it is unlikely that you would be released until you had successfully completed Kia Mārama. If you cannot complete the Kia Mārama programme or you are still deemed a risk at the end of any sentence that you may serve, it will be open for the Department of Corrections to file

further applications with the Court, either to detain you or for you to be subject to an extended supervision order upon your release which then will contain you in relation to the people that you may be able to have contact with and where you may live.

[12] On all charges you are now convicted. You are sentenced to nine years' imprisonment.

J A Farish
District Court Judge