EDITORIAL NOTE: NAMES AND/OR DETAILS IN THIS JUDGMENT HAVE BEEN ANONYMISED.

IN THE DISTRICT COURT
AT DUNEDIN

CRI-2016-012-000109
[2016] NZDC 18269

THE QUEEN

v

RONALD NOEL BARKMAN

Hearing:	20 September 2016
Appearances:	C E R Power for the Crown S A Saunderson-Warner for the Defendant
Judgment:	20 September 2016

NOTES OF JUDGE M A CROSBIE ON SENTENCING

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[1] Mr Barkman, you may remain seated until the conclusion of my remarks, at which point I will ask you to stand. If at any time you cannot hear me, would you please raise your hand.

[2] Mr Barkman, you are 89 years of age and you are here for sentence today in respect of a number of matters. They are five charges of indecency with girls under 12. They are laid in a representative form and they each carry a maximum penalty of 10 years' imprisonment.

[3] Your sentencing today follows your acceptance of an indication that I gave on 25 July this year. That indication is contained in some 25 paragraphs and includes matters of law, which I will not be repeating today. Suffice to say that taking into account the authorities, including the authorities that instruct that you are entitled to

discounts from the starting point that counsel took, I indicated a sentence of imprisonment of no more than two years.

[4] I should say that the discounts provided are quite significant: 25 percent for your guilty pleas; but also significant other discounts taking into account your age, the condition of your health and the length of time that has passed since the offending occurred when there has been no other offending.

[5] I should say that in my view the Crown's approach towards discount was a conservative and moderate view because the significant discount for delay between the offending and sentencing needs to be balanced against there being more than one victim and the representative nature of the offending.

[6] Those sentencing remarks will now be available to the press and to members of your family.

[7] Before I get into sentencing proper, I want to note for the record that, following the sentencing indication process, I had concerns about the entry of your plea. Similarly, the probation report tells me that you do not accept the offending happened. I issued a Minute to counsel last week noting that one of the victims, who is here today, was travelling from [overseas location deleted]. I asked counsel to advise me of any issues that needed to be dealt with ahead of today, including any adjournment, so that we may prevent an adjournment application being made today when the victim has already travelled.

[8] I received nothing back. I saw counsel in Court yesterday and in chambers today. I indicated that I would not sentence you unless I was satisfied that you accepted that the offending occurred. I have now received through Ms Saunderson-Warner a copy of the summary of facts that notes on it that you have had the summary read to you and that you accept its contents. You have signed it. So on that basis, I am comfortable proceeding to sentence.

[9] I want to acknowledge that this will be a difficult day for you and your wife and members of your family. However, it is also a very difficult day for your victims

and their family. I want to acknowledge both of you for first being present today. Second, for having the courage to stand and face [the defendant] and read to him the real effect that this has had on you. Courage is an understatement. I know from now great experience the real effects that this type of offending has on victims and their families. Can I just say to you, and it is trite, none of this is your fault. All of this is Mr Barkman's fault. You have long productive lives ahead of you. I hope that today will bring some closure for you in relation to what has been a horrible, if not horrific, chapter of your lives. So thank you for taking the time to be here and to read your statements to me.

[10] I am going to read the summary of facts. I do so because they are not recorded in my sentencing indication. I do not wish to re-victimise the victims. You are welcome to stay, but really as a matter of law I need to record what occurred and, in the particular circumstances of this sentencing, what Mr Barkman agrees occurred.

[11] As I have noted, there are two victims in this case. The first is [details deleted] and is now aged [age details deleted]. The second is [details deleted] who is currently aged [age details deleted].

[12] When Mya was aged five and six, [details deleted] to be disciplined. You would give her a thrashing. The smacking often left hand marks on her leg. You would say to her that she was adopted, [details deleted]. You would shut the door and make her strip from the waist down. You would then bend her over your knee and you would usually sit on the edge of the bed. She had to look forward or look at the ground and was not allowed to turn around. You would hit her. [Details deleted]. You would use your fingers to discover the inside of her vagina and you would masturbate yourself at the same time with your other hand. When you were done, you would stand up, pull your pants up and do up your belt. This happened once a month for a two-year period and only stopped as she started to retaliate and fight back.

[13] The second victim Imogen is [details deleted]. Her family lived in Dunedin and she was aged four to nine years at the time of the offending. Between [date

deleted] 1990 and [date deleted]1995, she would often stay with you and your wife, who regularly helped out with childcare. She went to [name of school deleted] and lived [details deleted].

[14] She would go to bed in one of the spare rooms. You would go in and say goodnight. You would pull down her bottom half and her underwear and rub her vagina. The bedroom door would be closed and you would stroke her. Sometimes you would be lying down, sometimes out of the bed, sometimes in the bed. You would rub around. You would say to her to put her hand on her clitoris and then her left hand on top and pleasure herself. On 50 occasions during the five-year period you rubbed her vagina and licked her vagina to the outside.

[15] You would also, on the same occasions, lie beside her and ask her to masturbate you and get her to move her hand up and down on your penis. You would get on top of her and rub your penis over her vaginal area. You would ask if you could put it in and she would say no or shake her head. You said it would not hurt, that it was a good thing and would then stand beside the bed and masturbate yourself. You would comment on her breasts saying you could not wait until she had boobs. You said it would always be your little secret. When spoken to by police, you declined to make an explanation.

[16] Today, Mr Barkman, as I have said, is a sad day for a great variety of reasons. When we look at the purposes and principles of sentencing and the aggravating and mitigating features we see why.

[17] In terms of the purposes of sentencing the first, as aptly put by Mya, is to hold you to account and promote in you some responsibility. You accept the summary of facts. Beyond that, I have real concerns as to whether you feel any responsibility or contrition for the harm you have caused your [victims]. This very public forum and the process leading up to it, is a public way in which you are held to account in the eyes of the community.

[18] Because of the concerns I have expressed, the public nature of the sentencing is also to promote in you, and hopefully through the conditions that I am going to

attach to the sentence, a sense of responsibility for and an acknowledgement for the harm that you have caused.

[19] Another purpose is the interests of the victims. I sincerely hope, as I have said, that today's process does provide some closure and comfort for them. No sum of money, in my view, would repair the damage that is done. No emotional harm payment can tangibly be offered. There is a risk that if I fix any modest sum today within your means that it would be seen as something of an insult. This is because, as I have said, no sum can meet the sexual violence that you meted out.

[20] Importantly, Mr Barkman today is about denouncing your conduct. Your conduct was the ultimate breach of trust. Your conduct was self-gratifying, demeaning and committed at a time when these women were very young women. Unsurprisingly, given their then ages, it has had a real and tangible effect on their lives.

[21] I am not going to repeat their victim impact statements. I accept what they have said. You are in the twilight years of your life. However, your actions will continue to remain with them through many years of theirs, in the same way as they have to date. The conduct was grave, depraved and quite frankly disgusting. It was of a level that if charged today would amount, in several respects, to unlawful sexual connection. However, at the time, the law provided for it to be charged as an indecency, with a maximum penalty of 10 years. I am obliged to apply the law as it was then.

[22] Deterrence is also an issue today. It is not unusual for our Courts to deal with historic sexual offending. There is no statute of limitations with respect to serious offending in our country. The law recognises that there are reasons why offending comes to light at a later date and that the impacts of the offending can occur over many years, if not decades. Historic offending comes before the Court at significant rates and is part of the day-to-day work of the Court. It is not unusual for us to see defendants therefore of senior years and not unusual for us to be dealing with offences that occurred decades ago.

[23] So deterrence is a necessary feature of today's exercise, signalling to those out there now engaging or thinking of engaging in some sort of conduct that the law will not look the other way, that this type of offending can come to light at any time and be subject to the full force of the law.

[24] For you personally, deterrence is a factor today. It ought not to be. I am told that you are at low risk because simply of your age and medical condition. I accept that. However, part of the sentencing exercise today needs to take into account that you have not signalled in any way, shape or form remorse.

[25] Ms Saunderson-Warner is quite correct that you have entered a guilty plea and you have received the full credit available for that. But an extra credit is available at law for remorse and contrition. Unfortunately, my assessment is that there is none. That is entirely a matter for you to deal with but not a matter I can give you credit for. Nor is it a matter that I am punishing you for. It is simply part of the factual matrix that goes into this and allows me to evaluate you as a man and a human being. So there needs to be an aspect of personal deterrence, not so much in relation to offending for the future but just to signal your lack of action with respect to some of the human features that I would normally see at a sentencing like this. I have to say, Mr Barkman, having been a Judge for 15 years, it is unusual to see, in a sentencing like this where guilty pleas have been entered (as opposed to being found guilty) a lack of contrition, apology or remorse. That is a factor that also goes to the end sentence.

[26] In terms of the aggravating features, we looked at that at the occasion. Briefly, the representative nature of the charges. They occurred over extended periods and on multiple occasions. They were carried out, as I have said, for your own sexual gratification. There were two victims, both of whom were [details deleted].

[27] In relation to the second victim, the Crown submitted, and I accept, there was an element of grooming. There was their young age when this occurred. Imogen was four to nine. Mya was five to six. There was a significant age disparity. In relation to Mya, 41 to 42 years. In relation to Imogen, 58 years.

[28] I have talked about the duration and the number of acts. There was a variety of acts. As I have said, indecent assaults at a high level. Actual penetration as far as the first victim is concerned. The maximum penalty, as I have said, is 10 years.

[29] My comments in relation to this type of offending accepts the Crown submission that sexual offending against children is unfortunately prevalent. With respect to Mya, the offending was accompanied by physical violence. As I have said as I have gone through, this offending is violent in its own right.

[30] I have previously referred to the law. I indicated a maximum penalty of not more than two years' imprisonment and took into account all of the factors that I could, including your age, the length of time that has passed, your medical condition, your plea, all of which is recorded.

[31] I note through the Crown submissions that the victims do not appear vindictive. They are open-minded about the sentence that the Court should impose. What they wanted to see was your plea and your acceptance for what you have done. Whether the plea and your signing of the summary of facts is enough is a matter for them. I would have liked to have seen you go a step further than that.

[32] As Ms Saunderson-Warner has said, capably in her oral and written submissions, a sentence of home detention is a sentence in its own right. I confirm that nothing has occurred between the sentencing indication and now that seeks me to vary from the indication of not more than two years. It could have been slightly more than that but I will stick to the point that I reached and I would appreciate it if the victim advisor could share the sentencing indication remarks with the victims so they can see how, as a matter of law, that sentence was constructed.

[33] As I said, I was looking for an indication of remorse and contrition. That is not present.

[34] The issue today is whether home detention is appropriate. The first issue is a home detention address at your current address is not available. One may be available around 1 December. The Court has the ability to defer the start date of

commencement of a sentence of home detention for up to two months, just slightly shorter than that period under s 80W Sentencing Act 2002 and the Court also has, as Ms Saunderson-Warner has said, the ability to, under s 80I of the Sentencing Act, impose a sentence of imprisonment which may then revert to a sentence of home detention once a suitable address has become available.

[35] I have no doubt, Mr Barkman, that a sentence of imprisonment is where we start. My question today is where do we get to? I would have imposed a sentence of home detention subject to those subsections that I have already referred to had that remorse or contrition been present.

[36] The primary factors at work here are personal factors of your age and medical condition. Balanced against that are the reservations I have about the home environment that you will be in, for reasons that I have already said. Judges would like to think that home detention environments are positive, accepting of the offending that has occurred and working with the agencies. By that I am meaning Corrections and social agencies who will be required to work with you and not meeting barriers along the way. I am somewhat circumspect about that.

[37] This really is a difficult exercise because sending you to prison, while entirely appropriate for the offending, is a difficult decision to make because of your age and your physical limitations. Hence my hesitation. However, Mr Barkman, mark my words, the offending is that bad and I hope that you get it. I hope that you get the effect you have had on these young women. That may take time or may never happen but as I have said to them, it is your fault, not theirs.

[38] What I propose to do, because an address as at today's date is not available, is to confirm that the sentence of imprisonment of two years will stand. There will be special conditions that will continue six months following. You will take such treatment, counselling, programme or intervention as may be directed, including psychological counselling and treatment, and any other treatment directed by the probation officer.

[39] I will also make a direction under s 80I that that sentence of imprisonment may convert to a sentence of home detention provided of course that the Court is advised by the Probation Service that a suitable address is available. That is to acknowledge the difficulty of a prison sentence given your age and health. That assessment of suitability will not be based only on an assessment of bricks and mortar but of suitability of occupants.

[40] Mr Barkman, you may stand please. You are sentenced to two years' imprisonment with an order made under s 80I of the Sentencing Act that that may revert to a sentence of home detention (with special conditions to follow on the same terms for six months following) on the basis that I have announced. I am grateful to counsel for their assistance.

ADDENDUM:

[41] By way of explanation, my comments in paras [36] and [39] relate to my observation of Mrs Barkman sitting with her hands over her ears as the victims read their statements and as I read the summary of facts. The Probation Service will need to assess the suitability of the residence, including whether the environment is supportive of special conditions.

M A Crosbie
District Court Judge