

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

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 WELLINGTON**

**I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA**

**CRI-2018-091-001411
[2019] NZDC 1272**

THE QUEEN

v

GRANT DAVID HANNIS

Hearing: 25 January 2019
Appearances: P K Feltham for the Crown
P A C Foster for the Defendant
Judgment: 25 January 2019

NOTES OF JUDGE S M HARROP ON SENTENCING

[1] Mr Hannis, you, of course, have pleaded guilty to indecent assault following the sentence indication that I gave you in November of an end sentence of 22 months' imprisonment, but with home detention to be considered. As to the facts, I summarised them in my sentence indication but I will go over them again.

[2] You are 55 and the victim is an 82 year old woman, who was retired and residing in a rest home and had done so since she suffered a stroke in 2014. She has some residual physical weakness and a limited range of motion in her left arm, and also suffers from vascular dementia, so she has mild cognitive impairment.

[3] At about 4.30 pm on [date deleted] May last year, you were at the rest home. You had been there to visit your [relative], who is a resident there as well. You visit [your relative] regularly, several times a week, and you also play in a jazz band which entertains residents at the rest home, so you are familiar to many of the residents there. On this occasion, after you had visited [your relative], you walked through the dining and lounge area and saw this victim. You sat on a chair next to her and talked to her for about three to five minutes then she got up and left the lounge. You left the lounge a few moments later and followed her down the hallway to her bedroom. There was further discussion in the hallway. You were slightly ahead of her when she entered the room, but you followed her into the room and shut the door behind you. You immediately approached her and started kissing and touching her. You placed one hand on her breast and the other against her vagina on the outside of her clothing and began rubbing her vagina. She attempted to push you away, but she was not able to because you were too forceful. You closed the curtains of the room so no one could see and, again, approached her and resumed kissing and feeling her vagina on the outside of her clothing.

[4] A caregiver then entered the room and saw you in darkness close together and switched on the light. You were noted to be red in the face. You were asked what was going on, but nobody replied. She left to find a manager and when she left, you approached again and continued to touch and kiss the victim. She attempted to push you away but, again, you were too forceful and she was not able to get away from you. You placed your hand inside her pants and underwear and felt her vagina. You pulled your own pants down and showed her your erect penis and pulled her pants and underwear down. Her underpants were wet and you left the room shortly after. The caregiver then returned to the room with a male nurse and found her alone walking out of the bedroom but wearing different trousers. When you were spoken to, you admitted the activity but you said it had been consensual.

[5] The aggravating factors inherent in that offending are self-evident and you have heard today the devastating effects that your offending had had, and will continue to have, not only on her, but on her family. Her daughter has eloquently set those out so you can be in no doubt about that.

[6] Of course, in terms of setting the end sentence, I will follow the sentence indication on which you relied when you pleaded guilty but, of course, I am going to also take into account the further information, and it is quite extensive, with which I have been supplied since that indication was given. That, of course, apart from the submissions today, includes a pre-sentence report, your letter of apology which you have read out today and, of course, the victim impact statement which has been read out today as well. There is the report from Dr Thompson of 3 January and the letter that he wrote on 17 January about the anticipated effects for you of the publication of your name and the granting of media applications. There is also a restorative justice memo indicating that although that was considered and you were willing to undertake it, it was not possible because the victims were not willing to engage with you. Of course that was absolutely their right and having heard what was said by the victim's daughter today, one can understand why they declined.

[7] The other point, of course, is that there has already been a very lengthy hearing today on the question of name suppression and I have decided to refuse you final name suppression.

[8] I am not going to repeat the reasons why I came to an end sentence of 22 months' imprisonment, but I direct that a copy of my 13 November sentence indication remarks, which were reasonably detailed, be supplied to media representatives if they wish to see them and they should be treated as part of these remarks.

[9] I indicated that home detention would likely be the appropriate outcome and I am certainly going to impose home detention today as the primary sentence. You have no previous convictions. You are previously of excellent character, well regarded in your work and in musical circles I think as well, and I acknowledge the effects that, and I will come to this in more detail shortly, this offending has had on you as well. What you did in a relatively short period of time was like a stone sending ripples out in all directions. The greatest and most adverse consequences, of course, accrued to the victim and her family, but I do not overlook the significant effects that you and those supporting you have had. You have resigned from your job, you have resigned

from the band; those are significant consequences and a form of penalty that you have suffered as a result of what you did before the Court does anything at sentencing.

[10] It needs to be recorded too that home detention is a strong deterrent sentence as the Court of Appeal has repeatedly emphasised. The pre-sentence report recommends home detention and it makes a number of other helpful observations about the steps that you have taken since being charged and, as I say, I have no hesitation in adopting that recommendation.

[11] You have accepted from the start that you have a problem and you have taken steps to do something about it. You have undertaken counselling. You have engaged with Dr Thompson as well, but particularly in relation to [the counsellor] you have sought to understand how this really inexplicable behaviour occurred and why and what you can do about it to ensure that it does not happen again. You have made it clear today in your statement that you have no intention of doing anything like this ever again and of taking the steps you need to take to ensure it does not. I acknowledge that.

[12] The home detention sentence would normally be one of 11 months' imprisonment. That is what a 22 months' prison sentence translates to because if you were sent to prison, you would automatically be paroled after half i.e. 11 months. The question for today is by how much that 11 months' home detention should be reduced to reflect the mitigating factors that were not taken into account at the sentence indication?

[13] I gave you already a 25 percent discount for pleading guilty; I should add that that is fully justified because not only was it at a fairly early stage, but the value to the victim in not having to give evidence and relive this incident would inevitably be extremely valuable to her and to her family. I have also recognised the information that was given to me about your previous good character and your community service as warranting a 10 percent discount. So that was what brought my starting point of two years and nine months' imprisonment or 33 months down to the 22 months' imprisonment that I indicated.

[14] The question for today, as I say, is how much further should that be reduced by the various matters that are put forward. First of all, I accept there is genuine remorse and I acknowledge, again, the statement you have made today and I accept it is genuine. I hope it has had some value for the victim's family to hear that directly from you.

[15] Second, you have clearly taken steps to try to address the issues that you have and to understand more about what happened. I also accept that although there is no evidence that you were suffering from any particular mental illness at the time, that there have been significant consequences for your mental health as a result of your offending. Those have been very well documented and canvassed in the name suppression decision and while I have found [the mental health issues] not to be at a sufficient level to warrant final suppression of your name, that is not to say that it should be ignored. It is real and there clearly have also been other effects on your life and on your wife which have been significant.

[16] You have had a very substantial fall from grace and the effects of that will be ongoing, and I accept that publication of your name will add to that. There is authority that the mental health consequences of the offending on the offender can, in some circumstances, warrant a discount and I am prepared to give you one because of all the information that I have received about that. I do not consider it is doubling up and when I add that to the remorse and the steps you have taken, your willingness to undertake restorative justice, I have come to the view that an end sentence of 18 months' imprisonment would be the appropriate end sentence and that equates to a nine-month home detention sentence.

[17] I am going to reduce that by a further month because I consider in a case like this, while of course the offending is against the victim, it is also an offence against the community and it is appropriate that community work is done to recognise that and to give something back to the community.

[18] I should say that in reaching the end sentence, I have also factored in the willingness that you have to pay \$3000 for emotional harm reparation. Now, as Mr Foster says, it may be that the victim and her family simply do not want anything from

you, but I will make the order and if it is the case that they do not wish to receive it, they, of course, can arrange for it to be paid to a charity used in some other manner.

[19] So, in summary, you are sentenced to eight months' home detention on the terms and at the address set out in the pre-sentence report. That will be served at that address on the recommended special conditions and, of course, the standard conditions. All conditions are to apply for six months beyond the sentence end date.

[20] In addition, you are sentenced to 100 hours' community work and you are ordered to pay \$3000 emotional harm reparation within 28 days of today.

Judge S M Harrop
District Court Judge

Date of authentication: 28/01/2019

In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.