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**IN THE YOUTH COURT
AT CHRISTCHURCH**

**CRI-2015-209-000326
[2016] NZYC 310**

THE QUEEN

v

JP

Hearing: 17 May 2016

Appearances: D Elsmore for the Crown
T Greig for the Defendant

Judgment: 17 May 2016

NOTES OF JUDGE N A WALSH ON SENTENCING

[1] Before the Christchurch Youth Court is JP aged 16 years and seven months, for sentence on four serious charges, namely that:

- (a) between 1 July and 30 August 2015, JP violated ER, and;
- (b) that on 8 November 2015, JP sexually violated AV, a male aged 13 years, by unlawful sexual connection occasioned by connection between JP's mouth or tongue and AV's penis, and;
- (c) that JP sexually violated AV, a male aged 13 years, by unlawful sexual connection occasioned by the penetration of AV's anus by JP's penis, and;
- (d) that JP on 8 November 2015 attempted to sexually violate AV, a male aged 13 years, by unlawful sexual connection occasioned by connection between JP's penis and AV's mouth or tongue.

[2] The first three charges of sexually violating ER and sexually violating AV (0881) carry a maximum penalty of 20 years' imprisonment. The other information 0883 carries a maximum penalty of 10 years' imprisonment.

[3] A copy of the summary of facts is to be annexed to these sentencing notes. JP, approximately six months ago on 17 November 2015, I remanded you into the custody of Youth Justice at Te Puna Wai. Subsequently, neuropsychological testing revealed that you had an IQ of about 70, indicating that you are in the borderline range of intelligence. Mr Greig on your behalf submitted that it has been a tough six months for you at Te Puna Wai and you have been an easy target of bullies. In short, it is my sense JP that you are a very vulnerable young person.

[4] The aggravating factors are as follows:

- (a) Your sexual offending against AV occurred four weeks after you were granted bail for sexual offending against ER.

- (b) AV, aged 13 years, has diminished mental capacity and functions at the level of a seven to eight year old child.
- (c) Your offending in my view was opportunistic and you repeatedly used actual and sustained physical force against ER and AV.
- (d) The effects on the victims, AV and ER, have been profound.

[5] I have had the benefit of hearing firsthand from ER's mother in Court today. ER, who was top in science and on track with other subjects in 2015, completely failed in all of her NCEA subjects and had to re-sit. ER now feels uncomfortable and anxious about being out in the evenings.

[6] I have read that ER understandably felt re-traumatised by attending the FGC and learning firsthand of the nature of your offending against AV. I have read that AV's dad feels that AV has started displaying bullying behaviours and is confused why you, AV's so-called friend, took advantage of him in the way that you did.

[7] The mitigating features are as follows:

- (a) You were 15 years, 10 months of age when you sexually violated ER and 16 years of age when you sexually violated AV.
- (b) You did not deny the offending and pleas were entered at early stages, after the benefit of legal advice.
- (c) You have displayed genuine and sincere remorse.

[8] You told your Youth Justice social worker, Lisa Rooney, that you regret your actions but you do not know why you offended. The STOP clinician felt that you "felt embarrassed and shameful" about these harmful sexual behaviours.

JP was aware of how his father and sister were struggling emotionally with his behaviour and how this had impacted them. He was also able to identify some feelings for the victims, about how they may have been disappointed in him as a friend. JP admitted to the charges when confronted by his father

and the police. During assessment, he reported that he is fully responsible for his behaviour.¹

[9] The position of the police is that at the FGC, all the participants agreed that as per STOP's recommendations, initially you should be placed at the community residential unit, Emerge Aotearoa, to begin your STOP treatment with a view to transitioning you back to your father's care. Unfortunately, there is not a bed available at Emerge Aotearoa today.

[10] Ms Elsmore, for the Crown, in her submissions, described Ms Rooney's report as "very well thought out," but it was her sincere concern that whilst the recommendations are in your best interests, the recommendations are not in the community's interest, given your offending happened in the period of four weeks and whilst you were on bail.

[11] Ms Elsmore reminded me that it was opportunistic offending on your part and she perceived difficulties in just how such an intense period of supervision can endure over such a long envisaged period of time. Ms Elsmore was concerned about the responsibilities and the burden that will be placed on your father, if you were to return to his house to live.

[12] Therefore it was Ms Elsmore's suggestion that you be placed at Emerge and that this case be adjourned to ascertain when a bed would be available. Ms Elsmore however supports the proposed sentence of rehabilitation. Ms Elsmore's submission was that another option was for the Crown to apply for a transfer to the District Court for sentencing and pointed out that this form of serious offending would have a starting point of 12 years' imprisonment.

[13] However, I ask myself, what would a sentencing Judge in the District Court jurisdiction do, given all the information that I have before me today?

[14] Lisa Rooney supports an immediate move to your father's care for the following reasons:

¹ page 4, STOP Assessment Report, 15 April 2016

- (a) Your father has been looking for alternative Monday to Friday employment so that he has every weekend free to supervise you.
- (b) Your father has obtained a new rental property in [location deleted], as from 28 May, to effectively distance you from the [location deleted] community in which your offending occurred.
- (c) You have spent six months on remand at Te Puna Wai and a further residential stay would only delay your access to specialist treatment for your harmful sexual offending.
- (d) A placement at Emerge Aotearoa, in Ms Rooney's opinion, could potentially expose you to contact with other sexual offenders in an open facility and she believed this could be a retrograde step. Ms Rooney said:

It may be that his engagement in therapy would be more beneficial and meaningful sooner if he did not have to adjust to living in a temporary and unfamiliar environment, only to then transition home to his father's care a few months later. Without excusing JP's behaviour, for treatment of the harmful sexual behaviours that JP has displayed to be more effective, I am of the view that JP would engage fully and be able to accept and understand the STOP programme if he was to return home immediately upon release and become settled at home with the love and support of his family, along with strict supervision conditions.

[15] Ms Rooney makes the following important observation:

For the safety of JP and the community, the family have to be honest in their observations and reporting. I believe that JP's father, Mr HP, is fully aware of the importance of honesty in maintaining the therapy, supervision and safety plan for JP. Mr HP is on board with the plans for JP and understands how important his role as JP's father and main support person, is in protecting the community from any further harm and that his awareness and vigilance is vital.

I am confident that JP will participate and engage in the STOP programme, as well as adhere to the additional conditions of his plan. It is great that JP is a young person that has a family that not only support him but are also willing to be party to the rehabilitation plan. For the victims, it is acknowledged that what they endured was not only unwarranted and will affect their wellbeing, it will take some time for their healing to be

complete. I believe that JP is aware that he can never put anyone in this situation again. Moreover, he has been told clearly that any further offending could see him in a different jurisdiction with far more serious implications.²

[16] Mr Greig, in his submissions in response to Ms Elsmore, rightfully points out that by law, the Crown is effectively stuck with the FGC plan. Ms Rooney said that she 100 percent supports the plan, after hearing today from the lawyers. The objective being that STOP, YCD, Mr HP and JP are 100 percent on the same page, to mitigate future risk.

[17] After hearing from Ms Elsmore, I have reflected on the need for community safety and the victims' needs. But after balancing all matters, I agree with Ms Rooney's submission that research shows that re-offending is not reduced simply by incarcerating offenders or by increased harshness to their sentences. Rather, well designed and delivered programmes can have real effect on reducing risk of further offending.

[18] I have been guided by all of the principles in s 208, in particular s 208(d), namely that a young person like JP who commits an offence, should be kept in the community so far as that is practicable and consonant with the need to ensure the safety of the public. I have also given particular attention to s 208(fa) and the principle that any measures for dealing with JP's offending, should address the causes underlying JP's offending. I find the safety of the public aspect will be addressed by an immediate referral to a STOP programme, JP's insight into the harm caused to the victims by JP's offending and the family support.

[19] Therefore after considering the principles of the Act, all submissions heard today and in particular the views of ER's mother, I find that an immediate move to the father's home is appropriate, given the commitment and level of family support and the potential risks and pitfalls if you went to Emerge Aotearoa.

[20] A further factor is what I believe is your genuine remorse, understanding and shame, notwithstanding the results from the neuropsychological testing. Notwithstanding the limitations, you know that what you did was so wrong and

² page 5, section 3.3.4 report, 12 May 2016

hurtful. Therefore I approve the plan prepared by Ms Rooney and I sentence you on all charges to supervision with activity under s 307 for a period of six months with the following conditions:

- (a) You will live at [address 1 deleted] and as from 28 May 2016 at [address 2 deleted], in the care of your father HP for the duration of the order. If you are to live at any other address, it must be first approved by a social worker.
- (b) You will have a curfew of 8.00 pm to 7.00 am Monday to Sunday for the duration of the order, unless with a Youth & Cultural Development staff member, your father or a family member approved by the social worker.
- (c) You will not leave [address 1 deleted] or [address 2 deleted], unless with a YCD staff member, your social worker, your father or a family member approved of by the social worker, for the duration of the order.
- (d) You will attend without fail an enrolment interview with [details of provider and course deleted] or any other agreed educational provider for the duration of the order. If you are sick, a medical certificate will be required.
- (e) While attending any educational provider, you will participate in all aspects of the course or programme.
- (f) While at course, you will not leave the [location deleted] under any circumstances unless with a YCD staff member, your social worker, father or a family member approved of by the social worker.
- (g) You will be supervised by a YCD staff member every weekday afternoon from 3.00 pm to 6.00 pm Monday to Thursday and 12.00 pm to 6.00 pm on Friday for the duration of the order. During

this time, you may participate in a YCD-based activity programme or complete community service as arranged by a YCD staff member or your social worker. You are to complete 80 hours of community service.

- (h) You will attend and participate in all programmes of the STOP programme for the duration of the order at which, at this point in time, will be [details deleted] for group therapy, each [details deleted] for individual family therapy. If sick, a medical certificate will be required.
- (i) You will follow all safety plans and rules that are developed with you and put in place for you by STOP, your social worker and your father.
- (j) You will not visit any place that other children are likely to be such as a playground, park or school unless in the presence of a YCD staff member, your social worker, father or a family member approved of by the social worker.
- (k) You will attend all scheduled appointments with any agency that the social worker identifies as necessary to support you throughout the duration of the order. If sick, a medical certificate will be required.
- (l) You are not to associate either in person or via telephone or social media with ER and AV for the duration of the order. Should you see either of these young people in public, you must remove yourself from the area and not engage with them in any way. Should you receive any form of communication from ER and AV, you must not respond under any circumstances and you must advise your social worker and your father of the contact.
- (m) You will re-engage in your youth group and associated activities in time, when approved by the group leader, STOP and your social worker.

- (n) You will have weekly face-to-face contact with your social worker between the hours of 8.30 am and 5.30 pm between Monday and Friday.

[21] JP, you will be 17 years of age in just a few months' time. At 17 years of age, you will be treated by the Court like a grown-up. If you sexually offend after the age of 17, you run the real risk of being sentenced following conviction, to a lengthy term of imprisonment. I remind you that the charges of sexual violation carried a maximum penalty of 20 years' imprisonment.

N A Walsh
Youth Court Judge