

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

**IN THE DISTRICT COURT  
AT ROTORUA**

**CRI-2015-063-003576  
[2017] NZDC 2418  
THREE STRIKES WARNING**

**THE QUEEN**

v

**CHAY HARE**

Hearing: 3 February 2017  
Appearances: N Tahana for the Prosecutor  
H Edward for the Defendant  
Judgment: 3 February 2017

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**NOTES OF JUDGE R L B SPEAR ON SENTENCING**

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[1] Chay Hare you are for sentence on a number of charges to which you pleaded guilty on 12 December 2016. That followed discussions between Crown and defence counsel that resulted in a resolution on the charges. That resolution was achieved by limiting the number of charges for similar offending so that they would be covered by representative charges in all but one of the respects. I will now deal with your pleas of guilty, were to representative charges.

- Charge 1, male assaults female (representative).
- Charge 2, sexual violation by rape (representative).
- Charge 3, sexual violation by unlawful sexual connection, in particular anal penetration (representative).
- Charge 4, sexual violation by unlawful sexual connection through digital penetration (representative).

- Charge 5, injuring with intent to injure by strangulation (representative).
- Charge 6, wilfully attempting to defeat the course of justice by asking the complainant to lie to the Crown or the police or at Court (specific).

[2] The summary of facts is not disputed by you. That is a summary that is attached to Crown submissions. It explains that you and the complainant had been in an off and on relationship for about six years. You have a [age details deleted] child together. You moved to Rotorua in 2015. The complainant was older than you. You developed a particular attitude towards her that left you feeling very jealous and possessive of her. That created difficulties that saw arguments between you on a regular basis and those arguments often developed as well because of your persistent demands for sex with her, notwithstanding her telling you to stop or that she wasn't interested. You paid no attention at all to what she told you, that she did not want sex on occasions, and you just helped yourself, as it were, as and when you saw fit.

[3] The offences covered by charges 1 to 5 relate to a period of approximately three weeks from 17 November 2015 through to 9 December 2015. Clearly, by that stage, the complainant had found herself in a position where she was having difficulty seeing how she could escape from this relationship. In that respect, she was clearly terrified of you even to the point where she lied to both her father and the police about the relationship and what was happening within it.

[4] The charge of male assaults female are evidenced by such matters as you throwing a shoe at her, hitting her in the head, throwing things at her, pushing her, slapping her and punching her on occasions. It is said that on 9 December 2015 while you were coming home from town with the complainant you became angry with her because she was walking slowly. She stopped to have a cigarette with somebody she knew. You came back and kicked her in the arm and stomach. You were arrested on that occasion which appears to have been the last occasion you were with her, that was 9 December 2015, and I expect that that is when the complainant made a full statement about what was happening in the relationship.

[5] Charge 2 is a charge of sexual violation by rape. It appears that you had some irrational belief that she was being unfaithful to you and you subjected her to

all sorts of indignities including raping her on a number of occasions. It is of some passing interest that after you raped her you would often apologise to her and you would say that it would not happen again. That may have kept her in the relationship for as long as was the case. Another way in which you forced yourself on her was by coming up behind her, pulling her pants down and having anal intercourse with her. She was not sufficiently strong to be able to push you away. There is of course digital penetration, as I have mentioned, and on occasions during these arguments between the two of you, you would grab her around the throat until she became lightheaded. That was often while you were raping her.

[6] Following your arrest on 9 December 2015, you were held in custody and on 30 January 2016 you made a phone call from the prison to the complainant. She had agreed to speak with you. You told her to go to Court and to tell the Judge that you had made a false statement because you were concerned you were going to go to jail for 15 to 20 years. Mr Edward has asked me to take particular note that you said, *“Oh well if you don't want to all good then.”*

[7] You are now 21 years of age. You were 20 at the time this offending occurred. As I have said, the complainant was around about eight to nine years older than you were. You cannot have been together that often. That is because you have been to prison now on five separate occasions and for quite lengthy periods of time. Indeed, in 2012 you were only 16 and you committed an aggravated robbery. You were sentenced in the Tokoroa District Court to 18 months imprisonment. On 12 September 2012 you went back to prison for a month on a charge of assault. In October 2013 you went to prison again on charges of theft, damage and breaching release conditions. That was for two months. In March 2014 you went to prison for eight months on charges of burglary, male assaults female and failing to answer District Court bail. On 10 September 2014, obviously just after you had been released on the previous sentence, you were sent to prison for a period of two years on a number of charges involving dishonesty, including burglary. Finally, on 28 September 2015, again quite shortly after your release from prison, you were sentenced to three months' imprisonment for breach of release conditions.

[8] Since you were 17, most of your life has been spent in prison and sadly there is a real risk here that you are going to spend most of the rest of your life in prison unless you change your ways.

[9] Because of your conviction for certain offences, sexual violation by sexual connection in particular, I am required to give you this warning. You are now subject to the three strikes law. I have to give you this warning by law as to what happens if you are convicted of another serious violent offence. You will get a written notice about this. If you are convicted of another serious violent offence other than murder and the Judge imposes a sentence of imprisonment you must serve that sentence without parole or early release. If you are convicted of murder you must be sentenced to life imprisonment without parole unless the Judge says otherwise. In that event you will need to get a minimum term of imprisonment. You have now put yourself in the position where if you are convicted of another serious violent offence you are going to be in prison for a very long period of time.

[10] Be that as it may, I must impose a sentence on you that reflects society's outrage that you have committed this series of offences against this woman. The sentence must mark the seriousness of the offending. It must hold you fully accountable for what you have done. It must do its best to encourage in you a sense of responsibility. I do not accept that you are genuinely remorseful for what has happened and that you are more concerned at your predicament, now facing a lengthy term of imprisonment.

[11] You have written a letter that has been placed before me saying that you are deeply remorseful and you would like to say sorry towards your victim. You say you wish you could go back to that afternoon and change it. However, this was not just one afternoon, it was repeated offending over a period of some three weeks and that shows that you have got entrenched

**Defendant** *Nah fuck this you're here to sentence me bro. Fuck all this fucking talking shit bro. Fucking, fucking sentence me bro I'm (inaudible 13:20:06) fuck this bullshit]*

[12] The defendant has told me to stop talking and just proceed to sentence him. If you do not want to stay in Court and hear the rest of the sentence you can leave.

**Defendant** *Nah just fuckin sentence me bro. Here for sentence not having a talk*

[13] I accept counsel's submissions for the Crown that an overall end point taking offending aggravating position into account is 13 years' imprisonment. That is 13 years for the sexual violation by rape and a further year for the other offending. I would reach that position even if I adopted Mr Edward's submissions that this falls within band 2 of *R v AM*<sup>1</sup>, and if that was so I would adopt 10 years for the repeated rapes and I would lift that by three years for the other offending. However it is approached, a sentence of 13 years is entirely appropriate given the seriousness and repeated nature of the offending.

[14] What can be said in mitigation? The first is that Mr Edward has asked me to take particular account of you were 20 years old at the time, you have had what can only be described as a sorry life, you lack insight, you are immature and you have really had little chance. To recognise those features to this case, I will reduce the sentence by nine months. For a late guilty plea, I will allow the 15 percent as sought by the Crown which is entirely appropriate and that leaves me with a calculation of 123 months or 11 years one month. In my view a sentence of 11 years' imprisonment is appropriate having regard to all the relevant features.

[15] The question is then whether I should impose a minimum term of imprisonment. In view of your age, I am not prepared to do so and that is the one concession I will make for you.

[16] The sentence will be imposed in this way.

- Taking charge 2, sexual violation by rape, as the lead charge - 11 years' imprisonment.
- Charge 1, male assaults female - one year's imprisonment.

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<sup>1</sup> *R v AM* [2010] NZCA 114, [2010] 2 NZLR 750

- Charge 3, sexual violation through anal intercourse - eight years' imprisonment.
- Charge 4, sexual violation by digital penetration - four years' imprisonment.
- Charge 5, injuring with intent to injure - two years' imprisonment.
- Charge 6, attempting to defeat the course of justice - one year's imprisonment.

[17] All charges will be concurrent so it is 11 years all up.

*Judge RLB Spear*

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*Authenticated pursuant to Rule 2.2(2)(b)  
Criminal Procedure Rules 2012*