EDITORIAL NOTE: PERSONAL/COMMERCIAL DETAILS ONLY HAVE BEEN DELETED.

IN THE DISTRICT COURT
AT PALMERSTON NORTH

CRI-2015-054-003160
[2017] NZDC 5248
THREE STRIKES WARNING

THE QUEEN

v

BINU ANTONY PAUL

Hearing: 13 March 2017

Appearances: J Harvey for the Crown
F Steedman for the Defendant

Judgment: 13 March 2017

NOTES OF JUDGE G M LYNCH ON SENTENCING

Introduction

[1] Binu Paul is 30 years old and is for sentence on charges related to serious offending in Auckland on 11 July 2014; and then in Palmerston North on 10 November 2015.

The Auckland offending against A

Abduction for sexual connection - charge 10

[2] On 11 July 2014 A then aged 16 years old and [details deleted] was attending a friend's party in [Auckland location 1 deleted]. A was described as moderately intoxicated when she left the party on foot at about 10.30 pm, heading to a family friend's home in [Auckland location 2 deleted]. It was raining heavily and despite

walking past a taxi stand A did not take a taxi as she did not have any money. Mr Paul stopped in his car next to her and offered her a ride. A thought Mr Paul was a taxi driver and said she didn't have any money, however Mr Paul told her he would drop her home. Mr Paul instead of driving her home, drove to a park where he stopped the car. A said she wanted to leave, however, Mr Paul repeatedly asked A to, "Give me a feel."

Aggravated injury - charge 9.

[3] Despite being told, "No," and pushing Mr Paul's hands away, Mr Paul began to touch A's breasts, softly at first, but then aggressively. He touched her breasts about four times. A then got out of the car but was met by Mr Paul and after a struggle A fell and Mr Paul sat on her back and punched A in the left side of her head and cheek a number of times. He kept telling her to get back in the car A was screaming out in pain. A acquiesced and got back in the car which Mr Paul locked. A kept telling Mr Paul she was pregnant so he would not touch her. Mr Paul said he had a girlfriend and then told A he was going to have sex with her. They got into the back and when A started to cry Mr Paul punched her again telling her, "I will stop hitting you if you stop crying." He punched her a number of times in the head and face. A told the police she almost lost consciousness.

Sexual violation by unlawful sexual connection - charge 6.

[4] Mr Paul instructed A to undress, which she did. Mr Paul then licked A's genitalia for about three to five minutes.

Sexual violation by rape - charge 5

[5] Mr Paul then inserted his limp penis into A's vagina. When he pulled his penis in and out he would have difficulty inserting his penis into A again. Mr Paul told A that if she did not co-operate he would keep hurting her. When A cried he punched her in the head again. Mr Paul tried to have sexual intercourse with A for about half an hour, during which the assaults continued. A estimates she was punched in excess of 30 times.

Sexual violation by unlawful sexual connection - charge 7

[6] At one stage Mr Paul pulled his penis out of A and put it in A's mouth, forcing her to give him oral sex, threatening further assaults.

Sexual violation by unlawful sexual connection - charge 8

[7] Mr Paul then got A to get back into the front seat, still naked, while he drove off towards Avondale, he being naked from the waist down. While driving he kept telling A that if she did not make him "come" he would get a condom and have sex with her again. Mr Paul then parked the car. A tried to get out and escape, but was stopped by Mr Paul who repeatedly punched her in the head. Mr Paul then forced A to perform oral sex on him until he ejaculated in A's mouth. Mr Paul then drove A towards her home address, dropping her off at [Auckland location 3 deleted]. In her haste to get away A left several items of clothes in Mr Paul's car.

[8] A's cardigan was found in a search of Mr Paul's Woodville home nearly a year and a half later in December 2015. Mr Paul told police that the sex was consensual and in exchange for money. A sustained several injuries from the prolonged attack including extensive bruising to the left side of her face as can be seen in the photographs.

Victim impact statement - A

[9] As A told us when she read her victim impact statement, she describes her facial injuries as looking as if she had been hit by a truck, and indeed the photographs speak volumes. A is anxious and finds it very difficult to go out in public by herself and it has taken quite a while to gain the confidence to socialise again, as she explained.

[10] A spoke of the affect on her parents, and that is not to be overlooked or underestimated. A states that her trust has been taken away by Mr Paul, and sadly she feels unclean. A considers that what she has to say and getting up and saying it

is important for others out there, and that is why she has travelled from Auckland to read her victim impact statement. It can be difficult for a victim to read their statement to the Court. Victim B should not be thinking I am saying she should have read, it is a monumental and can be overwhelming task. But it is important to remember that victims are not an inconvenience to the Court process, which to them and their families must look like, at times, uncaring and impenetrable. Victims bravely reading their statements is a reminder to all; the Court, counsel, defendants, media; and the public, that this process is about real people.

The Palmerston North offending against B

[11] On 10 November 2015 at about 11.15 pm Mr Paul was parked in his car on Fitzherbert Street near the takeaway shops approaching The Square. He had been eating some food when he got into conversation with B who was walking past his car. B was described by the police as heavily intoxicated. Mr Paul got out of his car and went with B into a nearby bar. They were only there for a few minutes before going back to Mr Paul's car, which they got into. After a short time Mr Paul drove off and while B told Mr Paul where her address was, Mr Paul drove in the wrong direction, and in and about Palmerston North. After at least one stop, Mr Paul at about 1.00 am, stopped in Parklands Crescent.

Injuring with intent to injure - charge 3

[12] During the journey Mr Paul became angry at B and punched her in the face or head area on a number of occasions. The first followed B telling Mr Paul he was driving in the wrong direction. He yelled at her to "shut up" before punching her. B was also punched and told to shut up when she kept asking Mr Paul to stop the car and to let her out. When B opened the door to get out Mr Paul leant over and pulled the door closed jamming B's lower leg and ankle in the door. Mr Paul then centrally locked the car. Once stopped Mr Paul punched B with some force at least four times to her face and head.

Assault with intent to commit sexual violation - charge 2

[13] Mr Paul then started to grope B, ultimately unbuttoning her top, pulling down her pants and touching her body.

Indecent assault - charge 4

[14] Mr Paul then pulled B's top and bra down and tried to suck B's nipple, his mouth connecting with B's breast. B then managed to escape from the car and obtain help from members of the public. Mr Paul drove away before returning and driving slowly past B before leaving with his lights turned off. B suffered bruising and swelling to both eyes, bruising to her right cheek, right temple and splitting of her lips which bled. When spoken to by the police Mr Paul said B had punched him first and he punched her back with the same force.

Victim impact statement B

[15] As with A, I have also seen the photographs of B's injuries to her face and the cuts to the inside of her mouth. The bruising, like A's bruising, is significant. B's victim impact statement was read on her behalf today. As B explained there have been ongoing consequences for her from this traumatic offending against her. B was initially in fear of being left alone and would wake up distressed, frightened and calling out for help. B felt incredibly uneasy and worried about a further attack. B's confidence improved particularly when Mr Paul was arrested, but she knows it will never be the same again. B had considered herself a happy, friendly and trusting person, but she has a much different attitude to strangers and describes herself now as cautious and standoffish.

Sentencing report

[16] The sentencing report was prepared prior to the issues regarding the summary of facts. It may well be that the minimisation of the offending against both victims needs to be seen in that light. In relation to A, you said you were dissatisfied with

your life and when you were presented with the opportunity of an attractive young woman who you could lure into your car, you took advantage of that opportunity. You said in your quest for sex you lost control of your moral compass. Very disturbingly you said among other things, that you have read of much worse offending online and considered your offending to be, "much less serious" than other incidences of rape. Astoundingly you said, "It wasn't an incident where I was a monster and she couldn't go home and get her life back together."

[17] In relation to B you declined to discuss that offending in any depth, perhaps because of the then pending dispute as to the facts, which was subsequently resolved. However, you acknowledged to the report writer that you had behaved badly and that obtaining sex was the motive of the offending. The report writer observed that notwithstanding the lack of insight into the seriousness of the offending and the likely affects on the victims, Mr Paul did exhibit remorse and advised that he did feel very guilty about his actions, had deep regret, not only for the pain caused to his victims, but also to his own family.

Purposes and principles of sentencing

[18] In sentencing you Mr Paul I am required to take into account the purposes of sentencing in s 7 of the Sentencing Act. In particular, those purposes are to hold you to account for the harm you have done to these two victims and the community, to denounce your offending behaviour and deter you and others from similar offending. I must also consider the protection of the community and providing for the interests of the two victims. I am also required to consider the principles of sentencing under s 8. In particular I needed to consider the gravity of the offending, the affect of the offending on the victims, the need for consistency in sentencing and the need to impose the least restrictive sentence appropriate in the circumstances.

Crown submissions

[19] The Crown have filed two sets of sentencing submissions; 10 February 2017 and 28 February 2017. The approach taken to sentencing was to identify separate start points for the Auckland and later Palmerston North offending, before turning to

totality. In relation to the Auckland offending, and for the reasons explained the Crown contended that a total start point of 12-13 years imprisonment was appropriate, being offending towards the top of rape band 2 of *R v AM*[1].

[20] In relation to the Palmerston North offending, for the reasons explained a combined starting point of seven years to seven years and six months is submitted as appropriate. Accordingly, the total start point for both sets of offending on the Crown's analysis is 19 years to 20 years and six months. On the totality basis, and for the reasons explained, the Crown submitted that a total start point before adjustments of between 17 to 18 years imprisonment would not be wholly out of proportion to the offending, which it described as being at the upper end of seriousness. Mr Harvey accepted this afternoon that there was no formulaic guide to totality and that a further adjustment from the Crown's 17 to 18 years might follow.

[21] While transfer to the High Court for consideration of preventive detention was not sought, the Crown did seek a minimum period of imprisonment between one half and two thirds of the total sentence imposed.

Defence submissions

[22] Mr Steedman has filed three sets of submissions on sentencing and as with the Crown I am grateful for the full and helpful submissions. Mr Steedman has also helpfully spoken to and elaborated on those submissions today. It is not possible in a sentencing hearing to refer to or reflect back everything that counsel have said, either in the written material or on their feet today. However, be assured Mr Paul that prior to sentencing I have read and reflected on the significant volume of material provided both by Mr Steedman and by the Crown.

[23] Mr Steedman helpfully filled in the personal background and explained the difficulties of the remand in custody and the isolation, which is suggested has been a factor in the sometimes slow progress in this matter. Mr Steedman gave me some information on your arrival to New Zealand and acquiring citizenship at the age of 19 or 20 years old. Mr Steedman describes you as a very private man to the extent

[1] *R v AM* [2012] NZCA 114.

that for quite some time your family were not told of the charges you were facing, you rebuffed offers of visits and did not reply to their correspondence.

[24] After the Auckland offending you travelled south and ended up renting in Woodville before the Palmerston North offending. The remand in custody down here has isolated you from family and from support. Mr Steedman submitted that the lack of detail, which is a feature of the sentencing report and indeed has been problematic in his dealings with you, is a product of your being so private and of your mental health. Mr Steedman suggests that at the times where Mr Paul has clearly shown little victim empathy, have almost invariably coincided with the times Mr Paul was depressed to the point of, as Mr Steedman described it, "personal disintegration."

[25] The issue of remorse featured significantly in the submissions, Mr Steedman submitting that five to 10 percent might be available. Mr Steedman explained that the reclusiveness within prison and Mr Paul's depression can properly be regarded as a very real manifestation of Mr Paul's remorse. Mr Steedman reported that Mr Paul had said there had been, "a complete change so far as my view of life is concerned; a complete 180 degrees."

[26] Mr Steedman, as did the Crown, referred to *R v AM* and a number of sentencing cases, however, Mr Steedman observed, with some force, that real care needed to be taken with comparing one case with another and referred to the observation of Ronald Young J in *R v Tipene*[2] at [7]:

> As has been often observed in this Court, it is difficult to make a close comparison of sentences when the facts of other cases inevitably differ: *Singh* at [12].

[27] Mr Steedman acknowledged that in relation to the Auckland offending the Court might possibly consider that the offending was at, or near the cusp of *R v AM* band 3. In the first set of submissions it was accepted that the offending fell towards the top of band 2 (a start point of 10-13 years). Mr Steedman considered he was not able to respond specifically to what had been the Crown submission that the start

[2] *R v Tipene* [2009] NZCA 343.

point for the Auckland offending should be in the range of 12 years and six months, other than to acknowledge that the available starting point range for the Auckland offending should clearly be no less than 10 years.

[28] In relation to the Palmerston North offending Mr Steedman accepted that the Crown's initial assessment of a start point of six years was, "probably a reasonable assessment" before totality was considered. In the most recent submissions 3 March 2017 Mr Steedman submitted that a significant reduction in recognition of totality should follow if the start point for the Palmerston North offending was fixed at the Crown's recast and contended seven years to seven years and six months. A total start point he suggested, "might be a little high."

[29] In relation to the reduction for guilty pleas, Mr Steedman submitted that notwithstanding the delays regarding the Palmerston North charges which he addressed with some detail in his submissions, and for the other personal factors canvassed, a reduction of 20 percent might follow. I will return to the issue of a minimum period of imprisonment.

Discussion

[30] Counsel are correct that totality looms large in sentencing Mr Paul today, but first I need to establish start points in relation to the Auckland and Palmerston North offending.

The Auckland offending against A.

[31] I have considered the cases to which I have been referred to by the Crown and defence in relation to this set of offending. It is not helpful to get too tangled in an exercise of comparative analysis of the cases referred to, when at the end of the day no case will be the same as another or to the facts here and particularly where the Court of Appeal has provided a guideline judgement in *R v AM*. Accordingly, Mr Paul's culpability is to be assessed applying the relevant factors identified by the Court of Appeal. Once that assessment is made the band and start point for sentencing can be identified. One of the difficulties counsel has been grappling with

was the multiplicity of offences. The offending is all connected as part of a series of events. Accordingly, I would identify a global start point, taking into account all of the offending. It would be artificial to create a series of start points to create an eye watering total start point and then address totality. Sentencing pursuant to *R v AM* permits an approach where all of the sexual offending and aggravating factors are taken into account.

[32] In my assessment the following factors are relevant to the culpability assessment:

(a) *Planning and premeditation*

On the face of it the Auckland offending has the hallmarks of opportunistic offending. There is no indication of the defendant stalking or hunting out potential victims, however, the Auckland offending cannot be considered in a vacuum given what occurred later in Palmerston North. The observation of the Court of Appeal on the SEU draft guideline which the Crown refers to is apposite:

> …offenders who show predatory, sexual behaviour may be more likely to offend in an opportunistic manner. They should not be treated as lacking premeditation.[3]

It follows that there is a degree of premeditation, however, there is no overt planning characterised by surveillance, disguises and attention to defeating forensic investigation as is sometimes seen. As Mr Harvey submitted, luring A into the car, was however tantamount to planning.

(b) *Violence, detention and home invasion*

While this was not a home invasion which would be an additional aggravating feature, Mr Paul used violence on a number of occasions throughout the ordeal, plainly to subdue A and to have her acquiesce. A was unable to leave the car she was lured into, was detained and

[3] *R v AM* at [37].

taken to a location where she was sexually offended against. When driven away from that place she was still assaulted. As the Court of Appeal observed in *R v AM* any violence or detention beyond that inherent in sexual offending of this kind increases the seriousness of the offending.[4] That is the position here and Mr Steedman quite properly accepted in his submissions that Mr Paul's treatment of both victims was callous and premeditated. While the detention is plainly a serious feature of this offending the violence was to quell resistance and at times was simply gratuitous. The violence component is in the moderate to serious category.

(c) *Vulnerability of the victim*

The victim was 16 years old, [details deleted], moderately intoxicated, walking alone in the rain and lured into a car. A was plainly vulnerable and that vulnerability exacerbated when detained in the car and assaulted. In relation to A's intoxication that would have been appreciated by Mr Paul and exploited.

(d) *Harm to the victim*

There has been both physical and ongoing emotional harm and trauma as the victim impact statement records and I do not repeat what I have already remarked upon.

(e) *The scale of the offending*

As the Court of Appeal observed in *R v AM* at [47]: "More than one incident or extended abuse over a prolonged period of time is more serious as is repeated rape or sexual violation and associated indignities." Here the rape was a determined one occasioned by Mr Paul reinserting his limp penis into A to effect sexual intercourse (rape). Mr Paul had also performed oral sex on A and had A perform oral sex on him. Together with continued assaults over a not

[4] *R v AM* at [40].

insignificant period of time. As Mr Harvey explained, the scale of offending is serious.

(f) *Degree of violation*

The seriousness of the offending increases as the degree of violation increases. The more force used and the actual violation the more serious the offending will be.[5] While the offending here is plainly bad, the degree of violation is best addressed in the scale of offending.

It is the combination of factors that is critical.[6] Rape band 2 of *R v AM* (7-13 years) covers:

> …offending involving a vulnerable victim or an offender acting in concert with others or some additional violence. It is appropriate for cases which involve two or three of the factors increasing culpability to a moderate degree.[7]

The Crown submitted that the offending against A fell towards the top of band 2 as indicated by the Court of Appeal's example of *R v Morris*,[8] a case with a starting point at the higher end of rape band 2. There is, of course, an overlap with band 3 (12-18 years) which is for particularly cruel, callous or violent offending. Band 3 is also for the vulnerable victim where there is serious additional violence or more than three of the culpability factors to a moderate degree.[9] While a case could be made out for band 3, I agree with the Crown that this is, considering the culpability factors I have identified, moderate to serious offending towards the top of band 2. I adopt a start point of 12 years and six months.

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[5] *R v AM* at [52].
[6] *R v AM* at [70].
[7] *R v AM* at [98].
[8] *R v Morris* [1991] 3 NZLR 641 (CA).
[9] *R v AM* at [102].

The Palmerston North offending against B

[33] Again I have considered the cases to which I have been referred to by Counsel. As I observed in the discussion on the Auckland offending, no case is going to be the same and care is needed comparing and applying cases because none are ever identical. Unlike for rape, there is no tariff decision for guidance on sentencing for indecent assault or assault with intent to commit sexual violation. There is however, a tariff decision for injuring with intent to injure (charge 3) *R v Nuku*[10] which applies the well known *R v Taueki*[11] culpability factors. I will use that framework to assess Mr Paul's culpability and to identify a total start point on the Palmerston North offending. Again, I will identify a global start point given that the multiplicity of Palmerston North offences are also all connected as part of a series of events.

[34] I turn then to the relevant *Taueki*[12] factors to assess culpability:

(a) *Extreme violence*

The violence was unprovoked and gratuitous. Indeed Mr Steedman acknowledged that the offending against B was "disturbingly violent." The photographs illustrate the seriousness.

(b) *Premeditation*

Again, like the Auckland offending, there is no appearance of overt planning and premeditation, however, the observation of the Court of Appeal in *R v AM* at [37] regarding predatory sexual offending I discussed earlier resonate. Mr Harvey in his oral submissions addressed premeditation in relation to the Palmerston North offending by observing that there was perhaps not a plan formulated as such when they met, but clearly a plan was formed by the time they got back into the car.

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[10] *R v Nuku* [2012] 3 NZLR 372.
[11] *R v Taueki* [2005] 3 NZLR 372 (CA).
[12] *R v Taueki* at [31].

(c) *Serious injury*

I have referred already to the numerous injuries B sustained and the resulting harm both physical and emotional. There is no argument that the injuries are in the moderate to serious category.

(e) *Attacking the head*

The violence included a number of blows to the head which is an aggravating feature.

(f) *Facilitation of crime*

The motive here was sex which Mr Steedman accepts was Mr Paul's aim. While care is needed not to double count this feature given there is a specific charge here of assault with intent to commit sexual violation (charge 2), the violence was to quell B's resistance and to have her acquiesce.

(i) *Vulnerability of the victim*

B was very intoxicated, which Mr Paul would have appreciated, was alone and it was late at night and once in the car was isolated and detained. B was plainly vulnerable because of those factors which Mr Paul exploited.

[35] *R v Thorpe*[13] provides a number of factors to consider when assessing culpability for indecent assault offending. I have considered those factors and I am satisfied the framework from *Nuku* is sufficient to assess culpability. However, the factors of intrusiveness, intensity and quality of the act, together with the duration of the offending, are also relevant factors here.

[13] *R v Thorpe* [2012] NZHC 229.

[36] The combination and seriousness of the factors I have identified place the offending on a *Nuku* analysis in Band 3, but here the injuring charge is not the most serious charge, it is the assault with intent to commit sexual violation charge, followed by the indecent assault charges. *Nuku* has simply provided a framework.

[37] While mostly it is not particularly helpful to refer to sentencing cases which are not guidelines, because as has been observed, the facts and the offenders vary so much, two cases may provide some assistance. In *R v Hassan*[14] the offender waylaid the victim who was walking through a park at about 4.00 am. When she tried to pass him he grabbed her wrist, he became aggressive and attempted to kiss her after she told him to let her go. The victim bit his tongue and he then pushed her to the ground, placed himself between her legs and pulled her tights down. The victim kicked out at him. The offender then kicked the victim in the face and the back of the head, she fell down a steep bank. The victim suffered injuries, the most serious of which was facial nerve damage. Mr Hassan was sentenced to six years imprisonment (six years for the sexual offending – a charge of assault with intent to commit sexual violation; and two years concurrent for the injury).

[38] In *R v Owen*[15] the offender was also charged with assault with intent to commit sexual violation and threatening to kill. Mr Owen had shared a taxi with the victim and her friend. He insisted he sleep on their couch. They refused but when he returned shortly after that they let him in. When Mr Owen made a lot of noise the victim went to tell him to be quiet. The victim rebuffed his sexual advances before being forced onto the couch and Mr Owen attempting to pull her tights down. Mr Owen started choking the victim, threatening to kill her if she screamed out. The victim did scream and Mr Owen stopped when the victim's flatmates responded. Mr Owen had managed to pull the victim's tights and underwear down. A starting point of six years was considered appropriate for all of the offending.

[39] It is always fraught with difficulty comparing cases, but both *Hassan* and *Owen* are less serious than Mr Paul's Palmerston North offending given the culpability factors I have already identified.

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[14] *R v Hassan* [1999] 1 NZLR 14.
[15] *R v Owen* [2012] NZHC 499.

[40] This was serious offending and I identify a total start point of seven years. The total start point I have identified is 19 years and six months. As both the Crown and defence recognise, the issue then is one of totality. For A and B and their families, what I mean by totality is that the law requires a total sentence to be proportionate to the overall gravity and culpability of the offending. Both the Crown and the defence accept that I will need to reduce the overall start point. Stepping back and considering the offending against both A and B and the culpability factors I have identified, in my assessment, a total start point of 16 years and nine months is appropriate. A total start point of 19 years and three months is just too high.

[41] Under our sentencing practice an offender is entitled to deductions from an identified start point for factors such as; previous good character, remorse, some personal factors and guilty pleas.

[42] In relation to remorse the Crown made a strong argument this afternoon for no credit whatsoever. Mr Harvey emphasised that the Court is looking for, if not extraordinary remorse, then at least demonstrable remorse. He submitted neither is present, or to the degree that a reduction should follow. From the 16 years and nine months I deduct six months for your willingness to engage in restorative justice (I am required to recognise that) and the expressions of remorse and as supplemented by Mr Steedman's submissions. Remorse is difficult to determine. There are things you have said which would be plainly offensive to particularly A which would indicate no insight and no remorse. Against that you have said some things that do open you up and seem to express sorrow for what you have done beyond feeling simply sorry for the plight that you are in. I cannot say that there is discernible remorse, but nonetheless there is some remorse. That you are finding jail difficult is not necessarily something that can aid your position, particularly on remorse.

[43] There is no deduction for previous good character, it would be an affront to both A and B. If you were for sentence for offending against only one victim I could see how a credit might be available, however sentencing does not occur in a vacuum and the reality is you offended against two victims separated by quite some time. When you offend so badly against A, then leave Auckland, your family and support and isolate yourself in Woodville, the only reasonable inference is that you have left

Auckland to avoid detection. However, the offending some time later in Palmerston North in a very similar way puts paid to any credit, and to be fair to you and to Mr Steedman, no credit is sought.

[44] In relation to the guilty pleas, the Crown for the reasons they explained submitted that a reduction of 15-20 percent was available. I can appreciate why the Crown have settled on that range. At 15 percent, or towards the lower end of that range, is sustainable and the Crown is absolutely right that while A knew that Mr Paul had pleaded guilty early, she was still going to be required in the case involving B, either at trial as a propensity witness or on a disputed facts basis again on a propensity basis. Accordingly, for A the stress and worry did not end with notification of the guilty pleas. In relation to B the pleas were later for the reasons I have endeavoured to explain. For B the stress and anxiety remained present for quite some time. Accordingly, 15 percent could be justified, however, I tend to Mr Steedman's assessment that the credit can be greater than that. The guilty pleas spared both A, a young woman, and B, together with their families, from what would have been a gruelling trial where they would have been retraumatised. While I would have liked the pleas to the Palmerston North charges to have been earlier and for there to have been much earlier resolution of the summary of facts, the sparing of trial for these two victims needs to be taken into account. *Hessel v R*[16] in relation to discounts for guilty pleas is not a straight jacket. I deduct three years and three months for the guilty pleas, resulting in an end sentence of 13 years imprisonment which is imposed by convicting and sentencing you as follows:

The Auckland offending:

- Sexual violation by rape (charge 5), nine years and six months.
- Sexual violation by unlawful sexual connection (charges 6-8).
- Abduction (charge 10).
- Aggravated injury (charge 9)

Four years and six months (concurrent).

[16] *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607

The Palmerston North offending:

- Assault with intent to commit sexual violation (charge 2) three years and six months – cumulative upon the nine years and six months on charge 5.

- Indecent assault (charge 4).

- Injuring with intent to injure (charge 3).

Two years and nine months – concurrent with the sentences imposed.

[45] While the Crown does not seek transfer to the High Court for consideration to preventative detention, as I observed earlier, it does seek a minimum period of imprisonment under s 86 of the Sentencing Act between a half and two-thirds. Mr Steedman in his first set of submissions conceded such an order was inevitable in all the circumstances, but in the submissions 2 March 2017 withdrew from that concession preferring to leave the issue to the Court.

[46] The Court may impose a minimum period of imprisonment if it is satisfied that the applicable period under the Parole Act is insufficient for all or any of the following purposes:

(a) Holding the offender accountable for the harm done to the victims and the community by the offending.

(b) Denouncing the conduct in which the offender was involved.

(c) Deterring the offender or other person from committing the same or a similar offence.

(d) Protecting the community from the offender.

[47] In my assessment the effect of serious offending in both Auckland and Palmerston North demands a minimum period of imprisonment to meet each of those purposes. But particularly to denounce the conduct and to protect the community. However, Mr Paul could not expect early release unless he has proven engagement with rehabilitation. I consider that the minimum term to achieve these

purposes is six years and three months. While the minimum can be applied against any sentence greater than two years, and represents just slightly less than 50 percent, I apply it against the rape charge (charge 5).

[48] Finally the first strike warning. As the Crown observed, Mr Paul received a first strike warning on the relevant Auckland charges when he pleaded guilty on 26 May 2016. A first strike warning is also required on the Palmerston North charges; assault with intent to commit sexual violation (charge 2) and indecent assault (charge 4). What is suggested is that I recall the earlier first strike warning and reissue it so it covers all offending under what logically is Mr Paul's first strike warning. Mr Steedman has no issue with that. The warning is recalled and reissued as follows:

[49] Given your convictions for sexual violation by rape (charge 5), sexual violation by unlawful sexual connection (charges 6-8), aggravated injury (charge 9), abduction (charge 10), assault with intent to commit sexual violation (charge 2); and indecent assault (charge 4) you are now subject to the three strikes law. I am now going to give you a warning of the consequences of another serious violence conviction. You will also be given a written notice outlining these consequences which list the serious violence offences.

[50] If you are convicted of any serious violent offences other than murder committed after this warning, and if a Judge imposes a sentence of imprisonment then you will serve that sentence without parole or early release.

[51] If you are convicted of murder committed after this warning then you must be sentenced to life imprisonment. That will be served without parole unless it would be manifestly unjust. In that event the Judge must sentence you to a minimum term of imprisonment.

G M Lynch
District Court Judge