

**IN THE DISTRICT COURT  
AT MANUKAU**

**CRI-2016-092-012036  
THREE STRIKES WARNING  
[2017] NZDC 6358**

**NEW ZEALAND POLICE**  
Prosecutor

v

**JASON PAUL TROTTER**  
Defendant

Hearing: 24 March 2017  
Appearances: Sergeant M Morgan for the Prosecutor  
V Letele for the Defendant  
Judgment: 24 March 2017

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**NOTES OF JUDGE D J McNAUGHTON ON SENTENCING**

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[1] Mr Trotter, you appear for sentence on a charge of indecent assault, driving with excess breath alcohol a third and subsequent offence and breach of release conditions. The lead offence the most serious charge is obviously the indecent assault.

[2] The complainant was a person you had met through an online dating service and you had been communicating with her for over a month. There had been communications via text messages but you never actually met her in person before.

[3] You drove to her address on the day of the incident that was [date deleted] October last year. You knew that the complainant was not going to work that day, she said she was at home [details deleted]. You were insistent that you wanted to

come over. She was trying to put you off. At about 2 o'clock in the afternoon she received a text message from you advising that you were outside in the street.

[4] You parked your vehicle in her driveway and got out of the car with a can of alcohol in your hand. You were flirting with the complainant asking her for a kiss and hugging her on the driveway. She went inside. You followed her in. Inside sitting on the couch you had exposed your genitals to the complainant and asked her to touch you. She said no. You then approached her in a physical way, put your hand into her top you were fondling her breasts. You kissed her a few times and pushed her head down towards your penis. The complainant managed to pull away. She told you that she did not want to have sexual intercourse. You approached her again. Your body was on top of her. You put your tongue into her mouth. Your hand was between her legs rubbing her vagina over the clothes. Again she pushed you off, and again you tried to force the issue by moving closer putting your hand inside her pants and her underwear.

[5] This incident was interrupted by a friend of hers who was knocking at the door. At that point you got up and left.

[6] I have a victim impact statement from the complainant which essentially says that she is traumatised by the incident, has had nightmares about it and disrupted sleep. She has lost trust in men. She talks about crying a lot and basically needing medication in order to get to sleep. She was not able to stay at home in the days that followed the assault being scared that you would return. She experienced panic attacks. Everything has been washed and cleaned but she has not been able to move past it.

[7] The complainant has contacted counselling services who have been assisting her. She has taken time off from work and is on stress leave. She is very jumpy when people come to the address especially cars in a driveway. The complainant is a [occupation details deleted] and replacing her and filling in for her has placed an extra burden on her colleagues.

[8] You have previous convictions for possession and making objectionable publications. You were sentenced to community detention for three months in 2015. Later that year you were sentenced to eight months' imprisonment in respect of two charges of indecent assault and since then, there have been convictions for breach of intensive supervision and breach of home detention. You were sentenced to one month's imprisonment in respect of a breach of home detention in June 2016. That is your last recorded conviction.

[9] I have a pre-sentence report which was prepared for the breach of release conditions. The nature of that breach was using a library computer and mobile phone to access dating and pornographic websites. The writer of this report had been supervising you since May 2016 and had been working closely with you and your partner and external agencies to deal with your issues of offence related sexual arousal and also alcohol addiction. You acknowledged that alcohol has been a major contributor to your sexual offending and the probation officer says that multiple attempts were made to have you admitted into a drug and alcohol residential rehabilitation facility, however those facilities do not accept offenders who have a history of child sex offending because of the risk.

[10] You have explained matters in more detail in your letter which I have carefully read. You say that you want to apologise to the complainant. You thought that you had permission to be there that day. You acknowledged that clearly you did not. You insist that you are not a violent person and of course you have no violence related convictions. You say you would hate anything like this to happen to your sisters.

[11] While there are parts of the complainant's statement you say you take issue with, you do not wish to take the matter to trial and you stand by your plea of guilty.

[12] You acknowledge the damage that has been done to your relationship. You emphasise that alcohol is the primary issue. That you are an alcoholic and have been an alcoholic for over eight years. You have been essentially self-medicating with alcohol.

[13] You explained that when you breached your release conditions and were resentenced last year, at that stage you were undertaking counselling with the SAFE Programme but were unable to return to the programme, and that the programme facilitators wanted you to attend an alcohol treatment rehabilitation facility, but then as the probation officer says there is this catch 22 where the SAFE Programme refuses to treat you unless your alcohol addiction is dealt with, and the sex offenders' treatment programme refuses to deal with you until you have sorted out your alcohol issues and so as you say, you were left in limbo, not coping, started drinking again and that is the background against which the indecent assault offending has occurred. You go further and say you would have actually paid for your own treatment if you had been permitted to work but release conditions as managed by your probation officer would not permit you to do that.

[14] You say that things were difficult financially, without your income your partner was struggling and this was another stress factor which contributed.

[15] You came before me a month ago on 24 February. I did not give a detailed or a reasoned sentence indication but indicated broadly that this was a serious indecent assault, it was a prolonged assault. The acts themselves were reasonably serious and there had been a significant impact on the victim and this had occurred in her home.

[16] I said the range in terms of a starting point would be somewhere between two and half and three years' imprisonment. I said there would be an uplift taking into account your previous convictions. I said if you pleaded guilty there would be a 20 percent reduction which would mean an end sentence well beyond two years' imprisonment.

[17] I said it was clear that alcohol treatment was a primary concern and if it was possible to get you into a treatment programme directly from custody, that is an option I would look at today and in particular higher ground.

[18] Counsel has made approaches to higher ground and regrettably their position is still the same. They are not prepared to take the risk of treating a client with a history such as yours so we are back where we started.

[19] You elect to be sentenced today without a pre-sentence report. The minimum term I could take in terms of a starting sentence on the indecent assault charge would be two and a half years' imprisonment. I would uplift that starting point by six months to take into account your history of indecent assault and a conviction for objectionable publications charges which means a sentence of three years' imprisonment. I would discount that by 20 percent to take into account your reasonably early guilty pleas, and that means a sentence of 29 months or two years five months.

[20] The issue that then remains is whether I can discount the sentence any further to take into account the circumstances in which all of this has occurred which is unfortunate and to a degree outside your control, and I am prepared to discount the sentence further by five months to reflect that unique set of circumstances that have produced essentially all of this offending.

[21] So that means in respect of the indecent assault charges the sentence is going to be two years' imprisonment.

[22] On the charge of driving with excess breath alcohol third or subsequent you are disqualified for 12 months and one day from today's date.

[23] On the charge of breach of release conditions, you are convicted and discharged, and this time around I have the Parole Board to get you into a treatment programme in custody before you are released.

[24] On the drink-driving charge you have been disqualified for 12 months and one day and I am going to make an order which authorises you at the end of that disqualification period to apply for a zero alcohol licence and that would be effective for three years from the date that is issued. If you do not apply for a zero alcohol licence your licence will be treated as suspended. If you drive you will then commit a further offence. So that means that is the only basis on which you can drive is the zero alcohol licence and I will just find the three strike warning.

[25] Given your conviction for indecent assault you are now subject to the Three Strikes Law and this is now your final warning which would explain the consequences of another serious violent conviction. You will be given this notice in writing repeating the warning I am about to give you now and it will also contain a list of the serious violent offences and of course that list concludes indecent assault.

[26] Firstly, if you were convicted of any violent offence other than murder or manslaughter then you will be sentenced to the maximum term of imprisonment for each offence. That will be served without parole or early release unless it will be manifestly unjust. So that would mean if you committed another indecent assault the sentence will have to be seven years' imprisonment. That is the maximum. If you are convicted of manslaughter committed after this warning you will be sentenced to imprisonment for life. The Judge must order you to serve at least 20 years' imprisonment unless the Judge considers it will be manifestly unjust to do so, in which case the Judge must order you to serve a minimum of at least 10 years' imprisonment. If you are convicted of murder after this warning you must be sentenced to imprisonment for life. The Judge must order you to serve this sentence without parole unless it will be manifestly unjust to do so. If the Judge finds it manifestly unjust to do so, then the Judge must impose a minimum period of imprisonment of at least 20 years unless that will be manifestly unjust, in which case the Judge must sentence you to a different minimum period of imprisonment.

[27] If you are sentenced to preventive detention you must serve the maximum term of imprisonment of the most serious offence. You are convicted of unless the Judge considers that will be manifestly unjust.

[28] It is a horrible long mouthful but it will all be in writing in the notice that will be served on you now.

D J McNaughton  
District Court Judge