

**IN THE DISTRICT COURT
AT NAPIER**

**CRI-2017-041-000376
[2017] NZDC 10508**

THE QUEEN

v

[MANAIA SILAO]

Hearing: 19 May 2017

Appearances: C R Stuart for the Crown
E J Forster for the Defendant

Judgment: 19 May 2017

NOTES OF JUDGE A J ADEANE ON SENTENCING

[1] Mr [Silao] appears for sentence this morning having pleaded guilty at the very earliest time to a representative count of rape and seven counts of sexual violation by unlawful sexual connection and two of indecent assault. The defendant is the step-father of the complainant who is now [a teenager]. She has been in his care since she was [age deleted] and the offending can be particularised in the following way.

[2] First, there was an isolated act of a digital penetration of the child when she was nine years of age. Thereafter, there was a resumption of offending during the time when she was between 11 and 13 years of age which involved digital and oral connection and included either one or two acts of full sexual intercourse where a condom was employed. Any coercion of the child was by non-violent means and eventually the complainant became acquiescent and the behaviour normalised.

[3] Defence counsel responsibly accepts that this was the product of grooming and that no real consent was involved nor, indeed, would the law allow it. Defence counsel also points out without minimising the conduct that it is distinguished from the worst cases of kind by the absence of violence or intimidation or indeed any of the other degrading features that sometimes accompany this class of offending. The conduct was repetitive, possibly it is estimated around-about three times a month, it extended over several years and that has to be acknowledged, but so too is the fact that bad as the case was, it involved only two acts of full sexual intercourse or rape.

[4] Counsel then points to the countervailing considerations and the probation report confirms a good deal of this. As a young man, the defendant took on a ready-made family and all the responsibilities that that involved. He has largely discharged those. The documents show that even with this offending known, he is held in both respect and affection by all of his children and the references establish this quite clearly. He is still [in his late 30s]. He has been in a relationship with the complainant's mother for [number of years deleted] years and is otherwise a hardworking and contributing member of the community. The case becomes particularly sad for that reason, but the same factors indicate that the defendant is well capable of reformation if the opportunity is given to him. He has no previous convictions and now has some insight into the wrongness of his conduct.

[5] Insofar as the complainant is concerned, again counsel submissions are accurate. She appears robust in her reaction to the offending, but of course, time will tell just what the end position is there.

[6] Given the relative infrequency of full intercourse, I would place the matter within band 3 in the guideline case of *R v AM*¹ and adopt a starting point of 14 years' imprisonment. A discount for an early guilty plea is certainly available to the defendant of 25 percent. In my view, this is one of those rare cases where notwithstanding the seriousness of the offending, there should also be a further discount for the combined effect of remorse, of the positive contributions which the defendant has made and to the prospect of reformation and a further 20 percent is taken off the sentence.

¹ *R v AM* [2010] NZCA 114, [2010] 2 NZLR 750

[7] The end result is a sentence of eight years and five months' imprisonment which is imposed on all charges of sexual violation.

[8] Concurrently for the indecent assaults, the defendant is sentenced to three years' imprisonment concurrently.

[9] By virtue of the nature of these convictions, the defendant is now advised that his name will henceforth appear on the register of sexual offenders. I am quite satisfied that publication of the defendant's name will identify the complainant and in the interests of her privacy a final order for suppression of name is made in relation to Mr [Silao].

A J Adeane
District Court Judge