

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

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**IN THE DISTRICT COURT  
AT PALMERSTON NORTH**

**CRI-2016-054-003257  
[2017] NZDC 14873**

**THE QUEEN**

v

**[LIAM CLARK]**

Hearing: 7 July 2017

Appearances: M Blaschke for the Crown  
F Steedman for the Defendant

Judgment: 7 July 2017

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**NOTES OF JUDGE L C ROWE ON SENTENCING**

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[1] [Liam Clark] you appear for sentence today having pleaded guilty to one charge of committing an indecent act on a child and one charge of sexual violation of a child.

[2] I acknowledge in Court today the parents of the victim and their family members but also some of your family members.

[3] What will be clear from what your lawyer will have told you and from the submissions you have heard today, is that the law gives a priority to protecting children

and in giving that priority, the Court sets some very high sentencing tariffs for this sort of offending.

[4] There is also a presumption of imprisonment that applies for offences of this kind.

[5] The relevant factors I take into account in assessing a starting point sentence are that your offending involved a significant breach of trust and I think that's obvious.

[6] Secondly, the very young age of your victim. She was seven or eight years old at the time and there is an innocence and vulnerability that goes with being seven or eight years old.

[7] Thirdly, the sexual violation, which is the most serious offence, was preceded by an indecent assault, in other words, an indecent touching of the victim.

[8] Fourthly, I have to sentence you on the facts here, namely that this was a single occasion of sexual violation.

[9] Fifthly, there is the additional charge of indecent assault and sixthly, and significantly, is the victim impact referred in the victim impact statements that I have received which, while they are brief, very succinctly and fully explain to me that your offending has caused sadness and depression for a child, she has become quick to anger and, in the case of her parents, they are numb about what occurred and still trying to come to terms with what occurred with their child.

[10] The case which guides a sentencing Court such as this is a Court of Appeal case called *R v AM*<sup>1</sup>. It sets out a range of bands for assessing starting point sentences. The Crown and your lawyer are agreed that the band engaged here is what is referred to as Rape Band 2.

[11] It is suggested by your lawyer that you are at the bottom of that range. The Crown agrees you are near the bottom of that range but not right at the bottom.

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<sup>1</sup> *R v AM* [2010] NZCA 114

[12] Here the factors that are relevant in assessing a starting point sentence are the factors that I have set out, but particularly, the young age of your victim, the preceding indecencies and the high level of breach of trust here. I assess an appropriate starting point sentence of seven years, six months' imprisonment.

[13] The indecent assault, by itself, is not at the upper end of the scale, needs discrete recognition but not an uplift. That is also why I apply an overall starting point sentence of seven years, six months' imprisonment.

[14] You have no previous convictions. You have previously been of good character. I have read the letters that family members have written about you and you have clearly been well thought of by your family. You have previously showed strength of character. You have also received a civil award for demonstrating strength of character in adverse circumstances and I accept that this offending is out of character for you.

[15] There is also some discussion of remorse. I have heard the careful submissions of Mr Steedman today. It seems to me that remorse for you and the apology you owe the victim and her family is a lifelong process.

[16] The comments in the pre-sentence report are of real concern in terms of the level of remorse. They present a mixed picture against the submissions made today. I think the proper way to reflect that you have previously been of good character and the remorse that is expressed through your counsel today, is to deduct 12 months from the starting point for all of those factors and, perhaps, to say to you that the comments in the pre-sentence report will be something the Parole Board will keenly look at. The Parole Board will closely assess your response to opportunities that will now be made available to you to seek treatment and whether you do take responsibility for your offending and not endeavour to minimise your responsibility for this conduct. All of these factors will be relevant to the assessment of whether or not you are an ongoing risk when released.

[17] It seems to me you have some proving to do. Given the comments that have been made by your family members in the letters that have been provided to me and

given your previous good character, I consider you are up to the challenge. But as I say, those are matters that the Parole Board will be looking at very, very closely.

[18] You also pleaded guilty, I assess at an early stage, at least at a stage when it meant that your victim did not have to give evidence which is a seriously traumatic thing for a victim to do and also save further trauma for her family. So I reduce your sentence by a further 20 months for your guilty plea. It was an important step for you to take.

[19] The end sentence I come to, therefore, is four years, 10 months' imprisonment. That is, to my mind, having regard to the factors I have identified, but also your personal factors and your guilty plea, the least restrictive sentence appropriate in the circumstances of this case.

[20] The sentence, therefore, is four years, 10 months' imprisonment.

L C Rowe  
District Court Judge