

**IN THE DISTRICT COURT  
AT AUCKLAND**

**CRI-2017-004-003311  
[2018] NZDC 293**

**THE QUEEN**

v

**RAJINDER PAUL SINGH**

Hearing: 10 January 2018  
Appearances: K Lummis for the Crown  
S Galler for the Defendant  
Judgment: 10 January 2018

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

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[1] Mr Singh, you are today for sentence having been found guilty by a jury of 20 charges of indecent assault. The maximum penalty for such offences is seven years' imprisonment. At trial you were acquitted by the jury of one of the charges that you faced.

[2] I am required to apply the principles and purposes of sentencing which Parliament set out. Of significance in this case are that I am required to hold you accountable for the harm that has been done by your offending. In your case the pre-sentence report indicates that you do not accept much of the jury's findings and you remain convinced that you are someone who has been wrongly convicted of these offences. That makes it difficult to directly find that you have accepted responsibility and it falls to me to hold you accountable.

[3] You of course are not to be punished because you hold that view and there would be no extra penalty, but there are some credits that a person might be entitled to if they had acknowledged what they had done which in your case is not present. I have to denounce the conduct which is present here and I do so in the strongest terms. I have to deter you and others from behaving in this way and that means that I have to sentence you in a way which is sufficient to bring home that this kind of conduct is deplored and will be treated in a way which is consistent with the principles and purposes of sentencing.

[4] I am also required to protect the public because this is offending which as the jury found, resulted from an advertisement for services and services that are highly demanded by the public. Appropriate massage therapy is something which is of great benefit to persons and to have that in disrepute and to have offending of the kind that has occurred here is a significant feature that I consider I need to take into account in terms of finding the appropriate sentence for you. I also am bound to consider your prospects of rehabilitation and for your reintegration.

[5] I am required to take into account the impact of the offending on the victims and you have heard mention of victim impact statements. I have read those, there are consistent themes which are within them. These are women who either were given gifts or themselves wished to receive the benefits associated with massage therapy. They did not expect the kind of behaviour which you provided and to an extent they were manipulated by you in circumstances where I accept they were vulnerable. You have caused considerable emotional harm to the victims who are involved. That is something that I am bound to take into account.

[6] I also have to impose the least restrictive outcome that is consistent with those other principles and purposes that I have referred to. I am required to consider the factors in relation to this offending that may be more serious than what might be termed an “average” case of this kind, and that is so that I find the starting point for sentence.

[7] The offending involved breaches of trust, it involved you performing a number of physical acts; brushing past or touching the victims’ genitalia or anus, that relates

to [Complainant 2], and [Complainant 3], [Complainant 5] and [Complainant 7], kissing the victims' back or neck and that involved [Complainant 9] and [Complainant 11].

[8] Touching the exposed breasts of victims with [Complainant 1] and [Complainant 11]. Touching the sides of victims' breasts with [Complainant 5] and [Complainant 9]. Touching the victims' inner thighs close to the genitalia and/or anus; [Complainant 1], [Complainant 5], [Complainant 4], [Complainant 7], [Complainant 6], [Complainant 8], [Complainant 10], [Complainant 11], [Complainant 12], [Complainant 13] and [Complainant 14].

[9] The degree of touching was invasive, the diagrams which were produced by the victims of the offending during the trial demonstrate that this was indeed highly invasive touching. The victims at the time of the offending were vulnerable, they were persons who were either naked or very much dressed down to their underwear.

[10] They were in a situation where you were in control of the circumstances. You controlled the timing, in many cases, if not all in relation to the appointments, you were in charge of the location. In some cases the locations were in isolated places, the victims felt that they were in your hands and literally they had allowed you to provide the service which they had sought to obtain. They were not in a position where they felt that they could complain about what you were doing and you took advantage of that situation. Your breach of trust is associated with their vulnerability and circumstances where this considerable vulnerability was present. You mislead them about your qualifications, about your experience, in an effort I would see it, to reassure them about the confidence they should place in you. On the basis of misrepresentations.

[11] You told them things that were not true about yourself, you told them things that were not true about your other customers and you told them things that were not true about your training and your suitability to be carrying out this form of massage therapy. You caused considerable harm to the victims. The victim impact statements are replete with the sense of confusion about this process, confusion about the things that you said about them. You described their body parts with regard to [Complainant

2] you suggested had a saggy bottom that you could fix through your skills. You suggested women had cellulite that you were able to deal with. You preyed on their insecurities and the fact that they were vulnerable to you. You used that in an attempt to increase their trust in you and to give you a position of power in terms of what you did in relation to touching their bodies.

[12] There are multiple victims, there are 14, the scale of offending is significant, the degree of intrusiveness as I have said was significant and in this case there was also planning and premeditation. The evidence which came out of the trial was of a pattern which was repeated, of things which were said and can only have been said in an effort to increase your position of power in respect of the victims of your offending to have them rely upon you and to enable you to manipulate their emotions.

[13] You managed to do so to a significant degree and this has brought about the sense of confusion. In some cases quite unjustifiably, victims have blamed themselves in respect of what happened. You took advantage of them for your personal needs and requirements and you did so in a way that was quite unprincipled and unscrupulous.

[14] The offending seen as overall contains no matters of mitigation within it. I suppose it could be said that you did not take the invasive techniques which you applied to the point where you were charged with sexual violation but the evidence as it came out of the trial would have meant that you were fortunate that you were not facing such charges in relation to at least two of the victims<sup>1</sup>, it seemed to me on the evidence that was presented the elements were made out.

[15] As regards a starting point there is no tariff case in relation to indecent assault. There are no guidelines in relation to persons who have offended in a way such as you have against multiple complainants, particularly in a situation where someone has manipulated the circumstances in a way that I saw you to have manipulated them in respect of this tranche of offending. That said, in *R v Fernando*<sup>2</sup> Priestly J when dealing with historical sexual offending that would now be categorised as sexual violation, adopted a starting point of two and a half years. He felt that the offending was

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<sup>1</sup> [Complainant 7] re “g string incident”, [Complainant 2] re touching of genitalia.

<sup>2</sup> *R v Fernando* HC New Plymouth CRI-2004-043-2794, 15 November 2006

comparable to the worst cases of indecent assault and he took this from Chambers J decision and sentencing notes in *R v W*<sup>3</sup>.

[16] The facts of *R v W* involved indecent assaults by a father on his daughter and is separate in terms of an assessment of the factual situation, but the aggravating aspects of the offending were taken to bring that case into the higher range for an individual case of a serious indecent assault. Clearly that is of course determined in part by the fact that historical offending meant that charges that are available now and would meet the definition of sexual violation by unlawful sexual connection were then unavailable. That said, the case has some parallels with the situation here and as I have said the degree of intrusiveness that your behaviour entailed means that I take the view that it was very close to sexual violation although that was not the charge that you are for sentencing upon.

[17] Accordingly, given the aggravating aspects in relation to [Complainant 2] particularly and I repeat that she was naked, vulnerable, you acted in breach of trust, you acted outside all of the expert views in relation to appropriate massage therapy, that you took steps to suppress her complaint in that when she recorded that she had liked the massage but that “[the defendant]” had sometimes touched her private parts. You tore up that message because it was inconsistent with your purpose in obtaining a statement from the victims, that you would see as suppressing their ability to be able to complain about what you had done to them. I see her case as being a very serious case of indecent assault if taken alone.

[18] When I take the aggravating factors into account and the public interest in being protected from persons who would behave in the way that you have, I reach a point where I regard two years as an appropriate starting point for your sentence. That of course is on the basis of a single and serious indecent assault.

[19] In this case I am bound to consider the scale of offending and the number of complainants. When I take that into account and I measure the aggravating aspects which apply in each of the cases, and in each of the complainants, I have in my view a duty to extend the sentence to take into account the fact that each and every

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<sup>3</sup> *R v W* HC Tauranga

individual complainant has suffered in a way that I regard as significant. For that reason I uplift the two year starting point by two and a half years to a sentence of four and a half years.

[20] From that starting point suggested, I then turn to regard your circumstances. I accept that you are someone who has no previous convictions. That is tempered I would suggest, by the fact that after [Complainant 1's] complaint against you and after your interaction with the police you undertook to them that you would not carry out further massage without training and you would not in any circumstances touch the breasts of persons being massaged or touch them in a way that was close to their genitalia or anus. You gave that undertaking, you did receive some training, I understand the total period of training that you undertook was some 10 days and the course of that training was a re-emphasis of what the expert evidence in your trial confirmed, that appropriate draping, that is to relieve embarrassment and to take something away from the vulnerability of persons who are having massages undertaken was something that you needed to do. You were not to touch the breasts of persons who were receiving massage, you were not to touch close to their genital area or anus.

[21] You of course have been found by the jury to have done all of these things and while at times there was draping undertaken, where your needs dictated otherwise the draping was either absent or you pulled it to one side. Accordingly I consider that for the mercy for your family in terms of their support for you, in terms of the people who know you and regard you to have other qualities that are worthwhile and in respect of anything that could be said about your absence of previous convictions I will allow credit. I cannot of course allow credit for remorse because you demonstrate no remorse.

[22] I cannot allow credit for rehabilitation because you do not accept that anything about your conduct was reprehensible. Given those things, the credit which I will give is one of six months with regard to the previous lack of convictions and such other matters are contained within your supporting materials and the matters that relate to your family.

[23] Mr Singh, I have read your Provision of Advice to Courts report. The first report was prepared without your input and I understand that there may have been some confusion. I do not take anything against you for the fact that it was suggested that you were unwilling to co-operate with community probation. I have read the second report which has been obtained. I hope that you have had an opportunity to see that report. The opinion of the report writer after detailing your position and your view that you were a person who had been wrongly suggested to have behaved improperly, was the following:

“Of concern is Mr Singh’s apparent lack of victim empathy and a complete absence of insight into the consequences of his offending behaviour. He presents with a high degree of justification and entitlement and regularly attributed his actions to spiritual elements of his practice throughout the entire interview process. His presentation along with the volume and gravity of the current matters is such that I can only make a recommendation of imprisonment”.

[24] Mr Singh, the type of sentence that I feel obliged to impose in your case is one where you will be before the parole board. Now the measures and consideration of matters that the parole board take is a matter that is outside my duties as a sentencing Judge but I can tell you that the sentencing notes that are prepared are read by the parole board.

[25] You are entitled to adopt the position that you are an innocent man who has been wrongly convicted although I have to say that the credibility of the complainants in this case was overwhelming and in the absence of credibility that could be put to your position, given the number of misrepresentations you have made and the changes of position that you have taken, puts your credibility at a very low level. Notwithstanding those things, you might want to reflect on what the parole board would make of your ability to rehabilitate because after having spent one third of your sentence you would be eligible to go before the board. Your current state of mind is such that they may not regard you as a candidate suitable for parole.

[26] Mr Singh, as you have heard I certainly have to emphasise that I regard what you did as an affront to the women who you abused in the way that you did. Their position is entirely one that is understandable. They have done nothing wrong, on the

converse side of things, I am required to apply a sentence that may well be considered elsewhere but I feel obliged to impose this sentence in the circumstances of your case. Now, if you would please stand.

[27] In relation to charge 1 you are sentenced to 18 months' imprisonment. In relation to charge 2 you are sentenced to 18 months' imprisonment. In relation to charge 3 you are sentenced to 18 months' imprisonment. In relation to charge 4 you are sentenced to 18 months' imprisonment. In relation to charge 5 you are sentenced to 18 months' imprisonment. In relation to charge 6 you are sentenced to 4 years' imprisonment. In relation to charge 7 you are sentenced to 18 months' imprisonment. In relation to charge 8 you are sentenced to four years' imprisonment.

[28] In relation to charge 9 you are sentenced to 18 months' imprisonment. In relation to charge 10 you are sentenced to 18 months' imprisonment. In relation to charge 11 you are sentenced to 18 months' imprisonment. In relation to charge 12 you are sentenced to 18 months' imprisonment. In relation to charge 13 you are sentenced to 18 months' imprisonment. In relation to charge 14 you are sentenced to 18 months' imprisonment.

[29] In relation to charge 15 you are sentenced to 18 months' imprisonment. In relation to charge 16 you are sentenced to 18 months' imprisonment. In relation to charge 17 you are sentenced to four years' imprisonment. In relation to charge 18 you are sentenced to four years' imprisonment. In relation to charge 20 you are sentenced to 18 months' imprisonment. In relation to charge 21 you are sentenced to 18 months' imprisonment. All the sentences will be concurrent which means you will serve a total of four years' imprisonment.

D J Sharp  
District Court Judge