

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

SUPPRESSION ORDERS EXIST IN RELATION TO ASPECTS OF THIS JUDGMENT PURSUANT TO S 205 CRIMINAL PROCEDURE ACT 2011: SEE PARAGRAPH [16]

**IN THE DISTRICT COURT
AT AUCKLAND**

**CRI-2015-004-009232
[2017] NZDC 22664**

THE QUEEN

v

CHAO-LI TSENG

Hearing: 5 October 2017
Appearances: D Dufty for the Crown
P Hamlin for the Defendant
Judgment: 5 October 2017

NOTES OF JUDGE B A GIBSON ON SENTENCING

[1] Mr Tseng, you were found guilty by a jury of all but one charge on which you faced trial. They were serious sexual charges involving four victims, all of whom were students of an art school conducted by you and [another]. The charges included rape and sexual violation, for which 20 years' imprisonment is the maximum punishment available. The range of offending was over two years in terms of the four complainants, although for some the range of offending was less than that of others. But they were all teenagers, including one who was under 16 at the time the offences were committed by you. All but one conviction was for representative charges, which was consistent with the evidence given by the complainants of the offending against

them having taken place repeatedly over many months or years, as the case happened to be. These were not one-off offences by any means. All of the complainants alleged multiple offending by you and that is a significant factor in your sentencing.

[2] The breach of trust in this case is highly significant. The complainants' parents sent them to your art classes no doubt thinking they were safe and sent them there because of your reputation as an artist and an art teacher. You abused their trust and you let yourself down in an appalling way in terms of the reputation you had built up over many years.

[3] There was clear premeditation. The victims were young in the sense they were aged between 14 and 18. They were from what might be described as sheltered backgrounds so they were very vulnerable. They felt trapped once you started offending against them, unable to protest or disclose what you were doing to their parents or to any adult and that was something I am sure you were well aware of, that you had them completely under your control.

[4] The scale of the offending was very significant. The sexual intercourse you engaged in with these complainants was also unprotected. All of the complainants but one have provided victim impact reports and they detail how much your offending has hurt them and how they have suffered. They refer to a loss of trust, particularly with men. They all speak of the changed relationships within their family. No doubt their parents feel that they have let their daughters down. They have not been able to protect and shelter them. Some of them speak of a loss of interest in art because when they undertake art studies or draw it reminds them of what you did to them. Some speak of insomnia and of having struggles with sleeping and all either oppose name suppression for you, which is relevant to another issue, or are neutral on that aspect.

[5] You had a recognised reputation as an artist and you are 50 years of age. You have no previous convictions. You have no children, but you have been in a marriage or long term relationship with your partner for a long period of time.

[6] The pre-sentence report speaks of your reluctance to understand the implications of your actions and the psychological trauma you have inflicted on your

victims and you having minimal insight. But I am told by Mr Hamlin, and I have no reason to doubt what he says, that you are making some progress on that and I have been handed letters of apology from you to each of the complainants. That may well be a measure of you making some progress and coming to understand how you offended and how you need to accept full responsibility. I suspect you have some way to go.

[7] You are a native Mandarin speaker but also fluent in French. You are not proficient in English. I accept that it is likely that you will be deported to Taiwan, once you have completed the non-parole part of your sentence, as now seems to be customary.

[8] Both counsel, of course, recognise that you are subject to sentencing in terms of the bands set out in the Court of Appeal tariff decision of *R v AM*.¹ Band 4 to my mind is the appropriate band. That deals with multiple offending where rape is the lead offence and offending over periods of time. That provides for a sentencing range as a starting point of 16 to 20 years' imprisonment. This was repeated offending against teenagers and in my view the starting point, while not at the very top of the band, namely 20 years, is reasonably close to it.

[9] The Crown have referred me to the case of *Nixon v R*² as being a case with some similarities. I accept it does have some similarities and a starting point of 20 years was adopted there. *R v T*,³ which is a case mentioned in the Court of Appeal discussion on the sentencing band that applies, is not identical but is mentioned at para (111) of the Court of Appeal decision in *R v AM* in particular concerning the element of grooming, and I think there were clear elements of grooming present in your offending. The Crown suggests a starting point of 16 to 18 years' imprisonment. Mr Hamlin, for you, has suggested 15 to 16 years' imprisonment on the grounds that the offending overlaps with band 3, but I do not agree and the starting point that I have selected is 18 years' imprisonment.

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

² *Nixon v R*

³ *R v T* [1999] BCL 78 (CA)

[10] You are entitled to a discount for coming before the Court without any previous convictions, which recognises to some extent that you were previously a person of known good character. That is not as significant as it might have been because of the scale and length of the offending, but I am prepared to allow some recognition to you having lived a substantial part of your life without offending in the way in which you appear for sentencing. I am also prepared to make some small allowance for the difficulties I accept that as a non-English speaker you will find in prison. That, as I mentioned to counsel is not perhaps as significant as it might have been 20 years ago given the change in composition of the population of Auckland, but I accept you will find some difficulty. You are not completely without English. You have some proficiency but I accept it is probably still going to cause you, for some time, difficulties in prison. Overall therefore, I allow a discount of 18 months to recognise your absence of previous convictions and a further six months to recognise the difficulties you will face as a non-English speaker in prison, leading to an end sentence of 16 years' imprisonment.

[11] The question of whether I should impose a minimum period of imprisonment is at issue, although Mr Hamlin accepts that in this type of case it is common to impose a minimum period of imprisonment. I can impose it if you were to be released after serving one-third of your sentence that in itself would be insufficient to hold you accountable for the purposes of denunciation, deterrence or protection of the community. In my view, denunciation and deterrence have to be the uppermost factors in sentencing you and I accept it would be inappropriate for those reasons to release you after serving one-third of your sentence and so I will impose a minimum period of imprisonment. The Crown have suggested 40 percent because you will be deported, but in my view the scale of this offending justifies a higher minimum period of imprisonment and the very minimum that I think I can impose is 50 percent of the end sentence which you will be required to serve before you can be considered for release on parole. So that means you must serve eight years before you can be considered for release on parole.

[12] ... [15][Submissions on suppression application.]

[16] What I will do is suppress publication of the name of the business your wife now operates, her own name and the street address of that business, although as I indicated to counsel in argument over the issue of name suppression the name of the suburb in which the offending took place can be published.

[17] The Crown was neutral as to that proposed course and Mr Hamlin took the responsible view that that might ameliorate the effect on your wife's business of your name being published.

[18] Accordingly, you are sentenced to 16 years' imprisonment on each of the sexual violation and unlawful sexual connection charges. On the charge of indecent assault and assault with a weapon there needs to be discrete sentences. On those charges you are sentenced to four years and one year imprisonment respectively. They are concurrent sentences so the effective sentence is 16 years' imprisonment with a minimum period of imprisonment of eight years.

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B A Gibson
District Court Judge