

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

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**IN THE DISTRICT COURT
AT PALMERSTON NORTH**

**CRI-2017-031-000526
[2018] NZDC 8401**

THE QUEEN

v

LYRIC DAISHAN HOFMANN

Hearing: 27 April 2018

Appearances: K Van Der Plas for the Crown
S Hewson for the Defendant

Judgment: 27 April 2018

NOTES OF JUDGE L C ROWE ON SENTENCING

[1] Lyric Hofmann, you appear for sentence having pleaded guilty to a charge of indecent assault.

[2] On Tuesday 25 April last year, at about 4.00 pm, the victim was home having an early dinner with her [young child]. She is a [details deleted] who lived, as you knew, just with her [child]. You went to her address, entered through the open door, asked the victim if she wanted to buy drugs. She declined. She stood up thinking you were going to leave but you then grabbed her buttocks. She turned away from you and waved your hand away before sitting down. You grabbed her wrists, put her left-hand down your pants, forced her hand on to your penis. She was able to remove her hand but before doing so, you had used your other hand to touch her genitalia over the

top of her clothing. While you had hold of her wrists you tried to kiss her on the lips but she moved her head from side to side to avoid you.

[3] It is significant that the victim's [child – age and gender deleted] was present while this was happening and ran outside to hide.

[4] The victim repeatedly told you “no” through this entire incident. You then pulled your pants down and tried to force her head on to your erect penis. You told her you wanted to spend some time in a bedroom with her. She managed to get off the chair and away from you. You grabbed her buttocks again but then left saying for her to not tell anyone about what had happened. She immediately informed a nearby [relative] of what had happened.

[5] The first thing I must do Mr Hofmann is identify a starting point sentence for this type of conduct. Both counsel refer to a sentence indication I gave you on 28 July last year where I referred to what are called culpability factors in setting a starting point sentence. There are four of them:

- (a) The type of conduct – in this instance, persistent, forceful, sexually intrusive assaults. In particular, trying to force this victim's head on to your penis was very close to attempted sexual violation.
- (b) This occurred in this victim's home.
- (c) It occurred in the presence of her [age deleted] child. The fact her child felt the need to run away and hide says a great deal about the type of conduct this child was witnessing at the time you were offending against her mother.
- (d) Finally, I have regard to the victim impact as set out in the updated victim impact statement. I also have regard to the fact that this victim was to some extent disabled. She refers to her disability in her victim impact statement. You knew her, you had been there before. You knew of her disability, you knew how she was.

[6] When I gave you that sentence indication, I referred to the case of *Hishon v R* [2016] NZCA 558 which reaffirmed a starting point range for indecent assaults, including on adults, of between six months to two years' imprisonment. Where you end up in that range depends on the culpability factors that arise.

[7] I made the comment in my sentence indication that a two year starting point was appropriate for the culpability factors that are at issue here and in fact it could be higher. I did not make specific reference in my sentence indication to this victim's disability which was known to you.

[8] You did not accept my sentence indication. That means I am entitled to revisit the starting point and ask, "was two years really enough to start for this offence?" I have decided today to give you the benefit of the doubt. I do not know enough about this victim's disability to say how much of a factor it was in her vulnerability. It is enough that you went into her home and did this in front of her child and it is enough that you did this knowing she would be alone. So I will stick with the starting point of two years' imprisonment. You should regard yourself as lucky though.

[9] The next issue is whether I ought to increase that sentence having regard to your previous convictions or the previous offences committed by you. You have a record of having committed indecent acts towards women on four previous occasions. You were sentenced for your last indecent assault three weeks before you committed this offence. In my sentence indication I indicated an uplift of three months' imprisonment for your previous convictions and previous offences. The Crown today resile from asking for a greater increase. Now that I know more about those offences I do not intend to revisit that uplift for a couple of reasons, even leaving aside whatever was agreed between the lawyers:

- (a) Firstly, three of your previous offences were committed while you were a young person and you were dealt with in the Youth Court.
- (b) Secondly, you are subject to the Three Strikes regime and here you are being sentenced for a second-strike offence. That, apart from anything

else, requires me to take very particular care that any uplift is proportionate.

- (c) Thirdly, I consider your convictions are more important when assessing whether the sentence should be one of imprisonment or home detention.

[10] I accordingly uplift that two years starting point by three months for the aggravating features which are your previous offences, plus the fact that you were offending whilst subject to a sentence imposed only three weeks previously.

[11] I do note the comment Mr Hewson has very responsibly made on your behalf that the intensive supervision sentence imposed three weeks prior to this offence had not had time to kick in, so you really had not had the benefit of it and I do bear that in mind. While it is right I do so, you committed this offence knowing you had been previously and specifically warned about not committing further such offences.

[12] I consider a starting point of two years three months properly reflects also the very real need in relation to you to get to the bottom of what is going on with you and why it is you are offending repeatedly against women in our community and to protect them. The primary sentencing purpose today is to protect the community and specifically to protect women. Why it is you are offending against women like this and have done so previously is something you need to reflect on and take responsibility for. Whatever else can be said, this cannot happen again. Our community, particularly the small community of Foxton, does not need a sixth victim Mr Hofmann.

[13] At the sentence indication I deducted seven months for your age and a guilty plea entered then. Of course you did not enter a guilty plea in July 2017. You did not enter a plea until March this year, and even then it was the Friday before your trial was due to start.

[14] That does impact on the level of discount you should get for your guilty plea but I also bear in mind you are still a young man. It may be that with proper assistance and proper psychological help you can address whatever it is that is going on here to stop you offending.

[15] So I am going to reduce the discount for your plea and your age but not by much. It is to send you a message that if you are guilty of something and you spin things out and keep everyone on tenter-hooks, including victims, as to whether they have to give evidence, that is obviously reflected in the level of discount applied. But here I do specifically recognise your age. The discount overall for your young age and your guilty plea is six months instead of seven months. The end sentence is 21 months.

[16] In applying that discount, I am also conscious that a sentence of 21 months' imprisonment is one that you will have to serve in its entirety because of the second strike that you are now on.

[17] I do not covert that to home detention. There are several reasons for this.

[18] One is the contents of the pre-sentence report which suggests you have a long way to go yet in taking responsibility for your conduct.

[19] I hear what Mr Hewson has said today that you stick by your pleas. But the person who wrote this report, if they were the person who was supervising you in the community, has been perhaps in the box-seat when assessing whether you take responsibility for your actions and are motivated to keep women safe. At the moment the jury is out on that question. You have to start walking the talk. If you are going to keep people safe, you need to show that you will do so, and you need to attend programmes. You need to undergo psychological counselling and you need to prove that you will keep people safe.

[20] The pre-sentence report currently suggests you are an untreated adult sexual offender and that you need some specialist help to overcome this. I regard the safety of the community is the primary consideration today. If you come back here for this sort of thing the Court will absolutely be starting with the safety of the community and anything else will pretty much go by the by. This cannot happen again.

[21] I note your grandparents are again stepping up to offer their home for home detention and I am urged by Mr Hewson to at least leave it open that you could apply

for home detention in the course of your sentence. I consider that the primary thing I need to tell you today is that the starting point for this is imprisonment. The end-point for this is imprisonment.

[22] You have come nowhere near demonstrating that you are taking responsibility to the point that I would leave home detention available. Also, your conduct on this occasion was an escalation in seriousness of offending. The primary purpose of protecting the community in my view can only be served by a sentence of imprisonment.

[23] The sentence is accordingly one of 21 months' imprisonment. You will be subject to six months conditions of your release. They are:

- (a) To reside at an address approved by a probation officer and not shift from that address without the prior written approval of a probation officer.
- (b) Not to contact directly or indirectly the victim of your offending.
- (c) To attend a psychological assessment with a departmental psychologist as directed by a probation officer and complete any treatment or counselling that arises to the satisfaction of a probation officer.
- (d) Attend an assessment for an appropriate alcohol and drug programme as directed by a probation officer and complete any treatment or counselling that arises.

[24] This needs to be the last day that you are before the Court for this sort of thing Mr Hofmann. We cannot afford any more victims it is as simple as that.

L C Rowe
District Court Judge