

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

**NOTE: PUBLICATION OF NAME(S), ADDRESS(ES), OCCUPATION(S) OR  
IDENTIFYING PARTICULARS, OF COMPLAINANT(S) PROHIBITED BY  
S 203 OF THE CRIMINAL PROCEDURE ACT 2011.**

**IN THE DISTRICT COURT  
AT ROTORUA**

**CRI-2016-063-004172  
[2018] NZDC 1118**

**THE QUEEN**

v

**JOSEPH MICHAEL STICKINGS**

Hearing: 24 January 2018

Appearances: A Gordon for the Crown  
L Owen for the Defendant

Judgment: 24 January 2018

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**NOTES OF JUDGE P W COOPER ON SENTENCING**

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[1] Mr Stickings, you have been found guilty by a jury on a charge of exploitive sexual connection with a person with a significant impairment.

[2] At the time of this offending, the complainant was a girl aged [age deleted]. She had an intellectual disability in the extremely low range of intellectual functioning. Her functioning was assessed to be that equivalent to a seven year old. You were 42 years of age at the time of this offending. She was a stranger to you.

[3] On a day in June 2015, the complainant was walking along [location deleted]. You were driving a motor vehicle. You stopped and spoke to her. One has to query

why you would do that. You then drove her to [location deleted], purchased dinner for her and, later, drove her to your home. Her evidence was that you had sexual intercourse with her on that evening. You say that you did not have sexual intercourse with her on that first occasion, but there was a friendship which developed and progressed to a sexual relationship at a later date.

[4] The complainant says that you texted her with rude messages after that initial meeting and that you met on a number of other occasions. Her evidence was that this first occasion was the only occasion where the two of you had sexual intercourse. You say that you had sexual intercourse with her three or four times but, in any event, the complainant got pregnant as a result of the sexual intercourse with you. She was only [a teenager, age deleted] at the time. Her intellectual disability meant that that pregnancy and the birth of her child has had a very significant impact, not only on her but on her mother who now bears the burden of raising that child because the complainant herself is totally incapable of doing so.

[5] Your evidence was that you did not realise that the complainant had a significant impairment and that you did not exploit that. This was something that was rejected by the jury, and rightly so. The expert evidence and the other evidence at trial, and the appearance of the complainant when she gave her evidence, makes it obvious that she is a person with a significant impairment. That would have been obvious to you and I am sure was obvious to you. The jury's finding is that you exploited that impairment.

[6] You have numerous previous convictions but nothing of a sexual nature. They mostly relate to dishonesty and drug offending. There is nothing in your previous convictions which would cause me to increase the sentence that has to be imposed.

[7] The pre-sentence report tells me that you are 45 years of age, that you have been employed as a painter decorator and that you are well regarded by your employer. I have seen a testimonial from your employer which supports that.

[8] The pre-sentence report indicates that you do not appear to understand the impact of your actions on the complainant and her whanau, although your counsel today says that you are very aware of that.

[9] An address has been assessed for an electronically-monitored sentence but such a sentence is not available in a case such as this.

[10] I have seen victim impact reports from the complainant. She makes the rather poignant comment that life is a little bit sad now because of the birth of her baby. Her mother has provided a full victim impact report as to the effect on the complainant and on the family. She makes the point that the complainant is totally unable to care for the child. This has fallen to the complainant's mother. The complainant's intellectual status is that she does not really understand what has happened to her. She did not know how babies were made, and her evidence in Court was it was hard to have that baby.

[11] I have seen a letter from you and you tell me in that letter that you have made a significant turnaround in your life from your previous life of dishonesty offending and that has happened mainly with the help of a supportive employer and your own determination no doubt, and it is a shame to see you in Court now having made those changes.

[12] The Crown in its sentencing submissions has referred to a number of cases. I will mention them; *R v McNally*<sup>1</sup>, *R v Lindsay*<sup>2</sup>, *R v Wilson*<sup>3</sup>, and also cases in relation to sexual offending with a young person, *B v R*<sup>4</sup>, *Jackson v R*<sup>5</sup>, and *R v V*.<sup>6</sup>

[13] The Crown has identified a number of factors which it submits supports a starting point between five and six years imprisonment.

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<sup>1</sup> *R v McNally* CA441/92, 6 April 1993.

<sup>2</sup> *R v Lindsay* HC Auckland, CRI-2009-055-002828, 11 May 2010.

<sup>3</sup> *R v Wilson* HC Hamilton CRI-2006-019-5529, 7 June 2007.

<sup>4</sup> *B v R* [2011] NZCA 654.

<sup>5</sup> *Jackson v R* [2014] NZHC 2425.

<sup>6</sup> *R v V* CA180/01, 30 August 2001.

[14] Your counsel also refers to some of those cases that I have just been referring to and says that what has happened here is that there was a friendship that morphed into a sinister sexual relationship, but alongside that sexual relationship there was also a caring relationship with your attitude towards the complainant being one of kindness. She submits that a starting point between four and five years imprisonment is appropriate.

[15] The factors which I take into account in assessing what that starting point should be are the vulnerability of the complainant because of her obvious intellectual disability and the disparity in ages with you being 42 years of age and her being [age deleted] but functioning as a seven year old. The initial sexual encounter has a whiff of opportunistic predatory behaviour about it. There was no grooming or particular premeditation in that initial encounter except buying the complainant [details deleted] which might have been seen as seeking favour with the complainant. There were the texts and, on your evidence, further sexual activity. There was the nature of the sexual connection which, in this case, was full unprotected sexual intercourse. There was the pregnancy which resulted from that, and that really is the stand-out serious feature of this case, and there is the impact on the complainant and her family that I have already referred to.

[16] In analysing the cases that have been referred to, I make the point that those cases are simply examples of sentencing and there is no particular tariff for sentencing in this area because the circumstances of each case can vary significantly. I do note the point made by counsel that *R v McNally* has some parallels to the present case, but there are also some distinctions between that case and the present case. In that case, the maximum penalty available to the Court at the time was seven years imprisonment, and it is now 10 years imprisonment.

[17] I accept that although this sexual offending occurred, there were other aspects of the relationship where you did show kindness to the complainant that were unrelated to any desire to exploit her sexually, and I am thinking particularly of you taking her to [the medical centre], and [details deleted], as an example. So it was not only for sexual purposes that this relationship continued.

[18] Having regard to all those factors that I have mentioned, I think the starting point should be five years imprisonment. I am not prepared to make any reduction for remorse. As I said to your counsel, the most effective way of demonstrating remorse is to make an early guilty plea, but you took this matter through to trial. The complainant had to give evidence and what you are now expressing, I think, is more regret than remorse. I factored into the starting point of five years imprisonment, that feature of the case that I mentioned in relation to some acts of kindness on your part towards the complainant, and no further reduction is warranted.

[19] You will be sentenced to five years imprisonment.

P W Cooper  
District Court Judge