

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. SEE**

**<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html>**

**IN THE DISTRICT COURT  
AT TAURANGA**

**CRI-2016-070-002662  
THREE STRIKES WARNING  
[2018] NZDC 1608**

**THE QUEEN**

v

**MARK ARONA  
PETER JOHN CHAMBERS**

Hearing: 31 January 2018

Appearances: N Batts for the Crown  
R Webby for the Defendant Arona  
M Dorsett for the Defendant Chambers

Judgment: 31 January 2018

---

**NOTES OF JUDGE I D R CAMERON ON SENTENCING**

---

[1] Peter Chambers and Mark Arona appear for sentence having been found guilty by a jury of various sexual offending. Peter Chambers was found guilty as the principal for sexually violating the victim by rape. Mark Arona was found guilty as a party to that rape. Mark Arona was found guilty as the principal to sexual violation by way of unlawful sexual connection, in this case oral sex and Peter Chambers was found guilty as a party to that unlawful sexual connection.

[2] The facts which have been established are that the defendant Mark Arona has been in the music industry for nearly 20 years. He started out as a DJ and his stage

name was Patriarch. He was a member of the group called Ill Semantics. He was the chief executive officer of a music and entertainment company called Illegal Musik. This is the company that organised The Platform Tour which toured New Zealand in the early months of 2016.

[3] The defendant Peter Chambers has been a musician for many years. At the time of the offending he taught music to young people as well as playing in local nightclubs. He was a DJ and had the stage name DJ CXL and was a member of a group called Ill Semantics. He was one of a number of musicians that toured the country in 2016 under the name of The Platform Tour.

[4] The defendants have been friends and colleagues for many years, producing and performing together many times.

[5] The victim in this matter was [details deleted].

[6] On [date deleted] a group of musicians called The Platform had a show at [name deleted], a Tauranga bar. The Platform group consisted of numerous acts with the stage names Ill Semantics, Mikey Mayz, Giant Killa, DJ CXL, B-Kidd, Lij, the Rascals and guests. Illegal Musik is the company behind the groups tour. The group were booked into the [location deleted] for the night and they had four consecutive rooms booked.

[7] Prior to the concert the defendant Mark Arona had been in contact with the victim asking her to attend and to bring some of her girlfriends along to the concert, which she did. The victim attended the concert at The Vault with a group of her friends. She had a good night drinking and catching up with numerous people that she had not seen for a long time.

[8] The group of musicians spent the first half of the evening at the [bar name deleted] watching the [event deleted] and at the conclusion of that they made their way to [bar name deleted] at approximately 11.00 pm. The group took some time to play their music, starting at approximately 1.00 am and played for an hour. The lights came on at the bar around 3.00 am and the party headed back to [location deleted].

[9] The defendants, the victim and one of her friends decided to go to [name deleted]. The defendant Mark Arona was driving the tour van. After making their purchase they returned to the [location deleted] and ate their food with the others, mingling in the rooms and the carpark. The victim's friend left after the food had been consumed and the victim stayed on with her friends in a heavily intoxicated state. The group went outside to smoke a cannabis cigarette. The defendant Mark Arona remained inside [location deleted in room 1]

[10] A cannabis "blunt" was passed around the circle and the victim had a puff as well. This caused her to cough and feel unwell. At this point she felt nauseous and her legs were weak. At that point the victim's memory blacked out. The victim's next memories are flashes of consciousness. She was unable to move her body but could hear and feel some things that went on around her.

[11] The victim next remembers being in one of the rooms with no clothes on, face down into a pillow and her hips pulled up. She heard the defendant Peter Chambers say "I've wanted this pussy for a long time." The defendant Peter Chambers was having sex with the victim and she could do nothing about it. The defendant Peter Chambers had inserted his penis inside her vagina. The defendant Peter Chambers was also heard to say "Look what I can do to her bro and she's not even flinching." The victim heard the defendant Mark Arona say "Good girl."

[12] The victim was manhandled onto her back. The defendant Peter Chambers was on her, having sex with her in the missionary position and the defendant Mark Arona was putting his erect penis into her mouth. The defendant Mark Arona pushed his penis in so far that the victim was unable to breathe causing her to dry retch and vomit. The defendant Mark Arona was heard to say words to the effect that he liked it when the victim made that choking sound. The defendant Mark Arona was holding her head and the victim heard "Cum on her face." The defendant Mark Arona finished by ejaculating on the victim's face and stomach. The defendant Peter Chambers ejaculated into the victim's vagina.

[13] At no time did the victim consent to any of the sexual activity performed on her while she was incapacitated. When the victim woke in the morning at 8.00 am she

had no clothes on. The defendant Peter Chambers was lying next to her in bed and the defendant Mark Arona was asleep on the second bed in the room. It was the victim's time of the month and she woke without the sanitary device she had inserted the night before. The victim quickly put some clothes on and the defendant Peter Chambers offered her a ride home which she accepted. Those are the facts.

[14] In the terms of the defendant's criminal histories, Peter Chambers has no previous convictions of any kind. Mark Arona has three previous convictions, namely for drink-driving, driving while disqualified and careless driving.

[15] In terms of the victim impact statement, the victim is now [age deleted] years old. She has [number deleted] children. Following the incident, she relocated to [details deleted]. Prior to that she had been working as [details deleted] She could not cope with that type of work following the incident and ceased to do that.

[16] She states that the incident has heightened her anxiety and acknowledges she had a tendency to be anxious prior to that. She mentions suffering a lot from negativity received from others in pursuing these charges right through to the end and also states that the whole experience, including the trial, has been very draining on her. She now has issues of trust in respect of others and is working as a [details deleted].

[17] In terms of the pre-sentence reports, in relation to Peter Chambers he is now 42 years of age. He is assessed as being at low-risk of re-offending. He has two children [ages deleted] and he continues to have the support of his ex-partner. However, he maintains his innocence, claiming that it was the victim that initiated the sexual activity with him.

[18] In relation to Mark Arona, he is now 40 years of age. He is assessed as being at medium risk of re-offending. He also maintains his innocence claiming that the victim initiated oral sex with him. He has a partner of some 25 years and two children [ages deleted], and his family are clearly very supportive of him. He has been very successful indeed in the music industry, particularly in the hip-hop side of that for many years. In the opinion of the report writer he would benefit from alcohol and drug counselling although there is no suggestion of any drug taking on the part of the

defendant at or around the time of the incident. Since the incident, he was diagnosed with [medical details deleted] and has had that surgically removed.

[19] There is a cultural report provided pursuant to s 27 Sentencing Act 2002. I have read that and taken it into account to the extent that I can. I comment that to a large extent it focuses on the defendants denying that there was non-consensual activity with the victim and so in that respect is of little assistance. It does highlight the success of both of the defendants in the music industry, including Mark Arona's many community-based initiatives to help young people in a variety of ways such as promoting them as musicians.

[20] I have also read the many and various references that have been filed in support of both defendants including from their family members. Once again it is clear that both defendants were well respected and well known in the music industry. Both had and continue to have good family support.

[21] Of course I need to hold them accountable for their actions, denounce their conduct and attempt to deter them and like-minded individuals from behaviour of this kind.

[22] In terms of the sentencing process itself, I have had the benefit of written submissions filed by the Crown and on behalf of each of the defendants. I commence by stating that each of the defendants encouraged the other to offend in the way that they did. There was very clear evidence from the victim as to what she heard during the offending and of course it is implicit in the jury's verdicts that each of the defendants was encouraging the other in that person's offending. I consider each of the defendants to be equally culpable for the overall offending.

[23] The *R v AM*<sup>1</sup> is of course the guideline authority. The lead offending in this case is the rape offence. That case identifies rape band two being a range of imprisonment between seven to 13 years which covers offending involving a vulnerable victim or where offenders act in concert with others. That band is

---

<sup>1</sup> *R v AM* [2010] NZCA 114, [2010] 2 NZLR 750.

appropriate where two or three of the factors increasing culpability are present to a moderate degree.

[24] In this case the aggravating features are first the vulnerability of this victim. She was very vulnerable due to her physical state at the time. I accept the evidence that she in effect lost consciousness after consuming the cannabis and that when she started to regain her consciousness the offending was occurring and she could not move her body or put up any resistance to the sexual offending which was going on at the time.

[25] The Crown rightly point to her evidence that she heard Mr Chambers say “Look what I can do to her bro and she’s not even flinching”, demonstrating that the defendants were knowingly committing sexual acts on a person who was for all intents and purposes inert. This aggravating factor is present to a high degree.

[26] There is an element of breach of trust as well. I accept that the offending was opportunistic. However, the victim knew Mark Arona and clearly had some trust in him and his friend Peter Chambers. Mark Arona was in charge of the tour and in my view it was clear that she felt safe in returning to [location deleted] in their presence. That faith in them was of course abused greatly. There is a breach of trust present to a moderate degree.

[27] There is also some significant emotional harm which has been suffered by the victim but I accept Ms Dorset’s point that there were no physical injuries to her.

[28] I make it clear that I do not accept the Crown position that this offending was akin to gang rape. However, the fact that there were two defendants involved is an aggravating feature of the rape.

[29] I have had regard to the various authorities referred to including *R v Stojanovich*<sup>2</sup> which involved a 17 year old victim who was offended against by her stepfather. This case is more serious than that, involving a person who was effectively incapacitated and involving two defendants.

---

<sup>2</sup> *R v Stojanovich* [2009] NZCA 210.

[30] There was discussion also of the *R v Goodrick*.<sup>3</sup> The offending in that case was considerably more serious than the present case.

[31] In all the circumstances for the rape charge I adopt a starting point of eight and a half years' imprisonment. Then considering the unlawful sexual connection offence which was the oral sex, I note that under *R v AM* USC band two applies to cases of moderate seriousness. On a stand-alone basis the starting point at the bottom end of band two of *R v AM* for unlawful sexual connection would be four years' imprisonment.

[32] The Court is conscious of the need to avoid double counting and it is an aggravating feature of the rape that there were two defendants involved. However, the oral sex was separate and distinct offending and warrants an uplift. Having regard to the need not to double count and taking into account the totality principle, I uplift the eight and a half years by 12 months to nine and a half years.

[33] In terms of mitigating factors, I reduce that level of imprisonment by 10 percent for each defendant for their otherwise good character, which reduces the total to eight and a half years. Neither defendant is remorseful as both continue to deny the offending and there are no other mitigating factors arising out of any of the material before the Court.

[34] Accordingly, in relation to Peter Chambers for the offence of rape he is convicted and sentenced to seven and a half years' imprisonment and for the offence of unlawful sexual connection, to which he was a party, he is convicted and sentenced to one year's imprisonment cumulative on the seven and a half years.

[35] In relation to Mark Arona on the charge of rape to which he was a party he is convicted and sentenced to seven and a half years' imprisonment. On the charge of sexual violation by way of unlawful sexual connection he is convicted and sentenced to one year's imprisonment cumulative on the seven and a half years' imprisonment. That is, both defendants have now received a sentence of eight and a half years' imprisonment each.

---

<sup>3</sup> *R v Goodrick* HC Tauranga CRI-2008-463-000074, 6 August 2010.

[36] Peter Chambers, given your convictions for sexual violation you are now subject to the three strikes law. I am now going to give you a warning of the consequences of another serious violence conviction. You will also be given a written notice outlining these consequences which lists the serious violent offences.

[37] First, if you are convicted of any serious violent offence except murder committed after you receive this first warning you will receive a final warning. In addition if the Judge imposes a sentence of imprisonment for that offence, other than life imprisonment for manslaughter or preventive detention, then you will serve that sentence without parole or early release.

[38] If you are convicted of a murder committed after you receive this first warning you will be sentenced to imprisonment for life. You must serve the life sentence without parole unless it would be manifestly unjust to do so. If you receive a life sentence without parole you will not be released from prison. If serving a sentence without parole would be manifestly unjust the Judge must specify the minimum term of imprisonment you will serve.

[39] Mark Arona, given your convictions for sexual violation you are now subject to the three strikes law. I am now going to give you a warning of the consequences of another serious violence conviction. You will also be given a written notice outlining these consequences which lists the serious violent offences.

[40] First, if you are convicted of any serious violent offence except murder committed after you receive this first warning you will receive a final warning. In addition if the Judge imposes a sentence of imprisonment for that offence, other than life imprisonment for manslaughter or preventive detention, then you will serve that sentence without parole or early release.

[41] Secondly, if you are convicted of a murder committed after you receive this first warning you will be sentenced to imprisonment for life. You must serve the life sentence without parole unless it would be manifestly unjust to do so. If you receive a life sentence without parole you will not be released from prison. If serving a

sentence without parole would be manifestly unjust the Judge must specify the minimum term of imprisonment you will serve.

I D R Cameron  
District Court Judge