

**IN THE DISTRICT COURT
AT MANUKAU**

**CRI-2016-092-009148
[2018] NZDC 1985**

THE QUEEN

v

MICHAEL FEA

Hearing: 7 February 2018
Appearances: B Smith for the Crown
M Winterstein for the Defendant
Judgment: 7 February 2018

NOTES OF JUDGE J C MOSES ON SENTENCING

[1] Mr Fea, you are for sentence before me today having pleaded guilty in October last year to one charge of sexual violation by rape. That charge carries with it a maximum sentence of 20 years' imprisonment and this charge relates to a historical rape from [year deleted]. At that time you were 23 years old and the victim was [under 16] years old. You were not known to her.

[2] On [year deleted] at around 6.00 am you were driving your vehicle on Massey Road in Mangere. The victim and a friend of hers were walking along Massey Road towards Middlemore Hospital. You drove past in the same direction and then performed a U-turn driving back past the girls. You pulled up next to them and asked for directions before offering to give the two girls a ride to Onehunga. They accepted and sat in your vehicle. You introduced yourself as [deleted] aged 19 years old and asked the girls if they smoked and drank alcohol. They said they did and they told you that they had run away from home.

[3] You drove both girls to some nearby empty buildings in Mangere and parked your vehicle. You offered the victim and her friend some cannabis to smoke. The victim initially refused but then after you insisted she did take cannabis but did not smoke it. You told them that you would drop them in Onehunga and you asked what they would give you in return. You asked who was going to give you a kiss. You then asked the victim's friend to get out of the car. After she had done so you moved to sit next to the victim in the back seat. The victim agreed initially to kiss you.

[4] As you were kissing her you removed your jeans. You continued to kiss her and positioned your body on top of her and pulled her pants and underwear off. She became scared. You then inserted your fingers into her genitalia and moved them around for around 10 seconds causing some physical discomfort. You took her hand and placed it on your exposed penis and used it to rub your penis for a short time. You then positioned yourself on top of the victim and inserted your penis into her vagina and had sex with her.

[5] The victim was afraid and did not know what you might do to her. You stopped, exited the vehicle and pulled up your pants. The victim then remained in the vehicle, put her clothes back on. You then said you would take her and her associate to Mt Roskill but dropped them somewhere near where you had picked them up in Mangere. The matter was then reported to the police soon after.

[6] As a result of what occurred the victim received discomfort to her genitalia and sought medical treatment. She was forensically examined the following day. Her underpants were seized and sent to the ESR. Your identity remained unknown until [date deleted] when retesting located your DNA on her underpants.

[7] Those are the facts on I must sentence you today. The law requires me, Mr Fea, to hold you accountable and what that means is that you need to be aware that there are consequences for what you have done and I am sure you are aware of that. I must also deter other people from this behaviour and publicly denounce this kind of behaviour.

[8] I must also take into account the effect that your offending has had on the victim and I have received a victim impact statement provided to me from the victim. It is fair to say that this offending on her at a relatively young age has had a significant effect on her life since. It has affected her decision making regarding relationships. She has become depressed and has had to deal with anxiety and post-traumatic stress disorder. It has caused issues with her own partner and she is fearful for her own children, and she was made to feel as though in some way it was her own fault what had occurred when clearly it was not. It changed her as a person and broke her spirit, and led her to be involved in drugs and alcohol which she used to numb the pain. She had attempted suicide on several occasions. All those effects are distressing. Sadly they are not unusual for victims of sexual offending.

[9] In this case there is clearly a number of aggravating features. Firstly there is the vulnerability of the victim. She was [age deleted] years old at the time, you were an adult male aged 23 years old. They had told you that they had run away from home and they were clearly vulnerable. There is also clearly a degree of premeditation in terms of offering them cannabis, driving them to a secluded area and asking the victim's friend to get out of the vehicle. There is harm which is inherent in the nature of the offence and there is the significant harm that I have referred to that this victim has suffered.

[10] The Crown refer to a number of cases and your lawyer has too. I am not going to go through those particular cases. There is not a great deal of difference. The Crown submits that a starting point of between seven and nine years is appropriate in light of the authorities. Your counsel submits that an appropriate starting point is seven years' imprisonment. Having regard to my view that this falls within the band two of the leading case of *R v AM*¹ and the number of aggravating features in my view the appropriate starting point is that of eight years' imprisonment.

[11] In terms of reductions that are available in many ways I am sentencing someone who is not the same person who was a 23 year old. This occurred over 20 years ago and it appears from that which I have read that whilst you have been to Court

¹ *R v AM* [2010] NZCA 114

there has been nothing of this nature, and it does appear that you have been in a relationship for some 20 years, you have children and you were in employment when this incident came back to revisit you, as it were, when you were approached regarding it. I am prepared to reduce the starting point by some 10 percent or 10 months on account of your personal circumstances. So from that eight year starting point or 96 months there is a reduction of 10 percent on account of your personal circumstances which reduces the overall starting point to that of 86 months.

[12] You have pleaded guilty. That did not occur until some three or four days before trial was to commence, and it did not occur after you had been given a sentence indication in April. The victim, as she refers to, has suffered anxiety from having to wait until the very last minute until you have accepted responsibility. Having said that I accept that there is a public interest in victims such as this having to give evidence. Despite the very late guilty plea, in my view, it does warrant a 15 percent reduction which amounts to some 13 months and that reduces the sentence down to 73 months.

[13] I have read the letter of remorse that you have given. You say in it that not a day goes by that you do not regret your actions and the series of events that led you there, and you know you cannot take back what you have done. I am prepared to give you a very small discount of one month on account of that expression of remorse. That reduces the end sentence to that of 72 months or six years' imprisonment.

[14] I have already commented, Mr Fea, on the changes that you have made to your life. Some of those are referred to in your counsel's submissions. Some of them have been referred to in the pre-sentence report. I also note the significant support that you have from family and friends here in Court today. That also says something about you and something that you should hold close to you whilst you serve this sentence. I have no doubt that those people who are supporting you here today will continue to support you.

[15] It appears in the pre-sentence report that there is a willingness on your part to attend any programmes that are available whilst you are in custody to address any issues that you may have or still have. You are fortunate to have the ongoing support of your family. I know it is not an easy time for your family either and that includes

your wife and your children. I know that it will be difficult for them but as you say you are unable to take back what has occurred and what my job today is to, as I say, hold you accountable for what you did do and the effect that it has had on your victim.

[16] For the reasons that I have indicated today you are convicted and sentenced to six years' imprisonment. I note also that as a result of your conviction of a qualifying offence under the Child Sex Offender Government Agency Registration Act I am advising you that you are a registerable offender pursuant to s 12 of that Act.

[17] The remaining charges the Crown have offered no evidence on and those charges are dismissed.

J C Moses
District Court Judge