

**IN THE DISTRICT COURT
AT WHANGAREI**

**CRI-2015-088-003482
[2017] NZDC 28945**

THE QUEEN

v

JUNYL LIU

Hearing: 18 December 2017
Appearances: C Anderson for the Crown
M Kan for the Defendant
Judgment: 18 December 2017

NOTES OF JUDGE B A GIBSON ON SENTENCING

[1] Mr Liu, you are 20 years of age now and you have been convicted of one charge of sexual violation by rape. The victim of your offence was [details deleted]. She had expressed some interest previously in a relationship with you and she had allowed you at times to sleep in her bed.

[2] She came home from Auckland one night and went to sleep in her own bed. You made your way there after she went to sleep and had sexual intercourse with her without her consent. She was in an extremely vulnerable position and obviously anyone has to be in a position to consent to sexual intercourse if it is to take place and she was given no alternative, because you simply forced yourself on her. So the act of rape was committed and the jury's verdict was clearly the right verdict, as you yourself now acknowledge through the pre-sentence report.

[3] I have read your letter of apology. I have also read the victim impact statement. Your actions have had considerable effect on the complainant. It has affected the way she relates to other people. It has left her feeling insecure and she had to go to trial and you might have spared her that if you had arrived at the position that you seem to have arrived at now much earlier.

[4] Nevertheless, the sentencing is what is known as band sentencing in terms of the Court of Appeal decision in *R v AM*.¹, as Mr Kan no doubt has explained to you. For you rape band 1 applies, that is a sentence of six to eight years' imprisonment. The sentence must fall, insofar as the starting point is concerned, within that range. Six years seems to me to be inappropriate because of the vulnerability of the complainant, she was asleep, and so that must be factored in in terms of the starting point.

[5] The Crown seeks a starting point of seven years. Your counsel seeks to persuade me that six years is appropriate. Taking into account all factors, I have selected a starting point of six years and six months, which is a starting point of 78 months.

[6] From that I have allowed you a slight discount of five percent for remorse, because I think you genuinely do show insight into your offending and are remorseful. Normally I would not give any sort of discount for that, but in your case I think that taking into account the fact that you are a young man it has taken you some time to get to the point where you now see what you have done was wrong and appreciate the effect it has had on the victim. So I am inclined to accept the pre-sentence report's view that you accept the verdict of the jury and you express remorse, empathy and insight into what you did. And because of that I will allow you a discount of four months.

[7] I also allow you a discount because you are not a native New Zealander. You are a young Asian man and English is not your first language. You had only been in New Zealand since June 2015 on a student visa. Serving a sentence of imprisonment will be, I accept, harder for you than it would be for other people who are born here,

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

or raised in a similar sort of environment, and so I allow you four months to take account of that as a discount from the starting point.

[8] At the time the offence was committed you were 18 years of age, so effectively you were a youth, and I give you a discount of seven months for that. And you were of previous known good character. You are entitled to a small discount for that. Not perhaps as much as it would have been had you been older, because you were only 18 at the time, but I give you a discount of seven months, leading to an end sentence of four years and six months' imprisonment, which is the sentence I pass on you.

B A Gibson
District Court Judge