

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 AUCKLAND**

**CRI-2016-004-010693
[2017] NZDC 25535**

NEW ZEALAND POLICE
Prosecutor

v

KEVIN JAMES NICHOL
Defendant

Hearing: 13 November 2017
Appearances: S Cossey for the Prosecutor
S Kilian for the Defendant
Judgment: 13 November 2017

NOTES OF JUDGE A-M J BOUCHIER ON SENTENCING

[1] After a Judge-alone trial the defendant Kevin James Nichol was found guilty of a number of matters, indecent assault on one [victim 1], indecent assault times three on [victim 2], and indecent exposure to [victim 2] of his penis. The first four charges carrying a maximum available penalty of up to seven years' imprisonment, and the last charge carrying only three months.

[2] Looking at the matters before the Court which I found the defendant guilty of after the hearing, as I said, the aggravating features of the offending in which I identify are as follows. That this occurred whilst the persons involved were all in the prison

on remand in the so called safe unit. The two victims were younger, and someone vulnerable. Thirdly, there was grooming of those younger victims, and premeditation and persistence were also obvious.

[3] As far as any mitigating features of the offending, there are nil. As to the aggravating features of the offender, his serious previous convictions which go back many years, are an aggravating feature, and also that he has no insight or remorse into the behaviour.

[4] Looking at his previous convictions they start in 1985 in Northland, and then in 2005 again there is a conviction and 2011, although the result for that is actually in 2014. He has received first of all periodic detention for the first matter. He has received imprisonment for the second two with, of course, post imprisonment conditions.

[5] The pre-sentence report indicates that he is aged 66 and is currently under an extended supervision order which was made in the Whangarei District Court. The term of that order was for seven years nine months, effective from 19 August 2015. It is suspended and time ceases to run on the order during any period that he is under legal custody which, of course he is now. The report notes that he is in denial of the offending and attempting to shift the blame to his victims, and sees himself as being victimised. His personal circumstances are mentioned that he suffered a permanent injury after a work-related forklift accident which causes problems with concentration, fatigue, memory loss, and expressing himself. However, apparently, observers of him reports that he overstates this to his own advantage. The offending related factors are offending related sexual arousal and sense of entitlement.

[6] The only real option available to the Court is a period of imprisonment. That is due not only to the recidivist nature of his offending as well as the emotional and physical harm and sexual harm caused to the victims, which I might say was clearly obvious to the Court when they both gave their evidence. I am also advised [details deleted]. So, again, there is nothing in the way of any alternative to a sentence of imprisonment.

[7] These are also matters where the first strike warning has been given. The police submit that due to the aggravating features a three year start point would be appropriate, plus an uplift for the previous offending.

[8] The defence have submitted that they can add little to matters that are already in the Court's purview. I have also checked with the probation officer as to any post imprisonment conditions, and have been advised that, of course, because of the extent of the supervision order they are not necessary.

[9] Considering the facts which I found here, and the aggravating features of the offender and the offending which I have identified, I am of the view that a two year six month start point is appropriate, plus an uplift of six months for the previous convictions. Taking it to a sentence of imprisonment on the four matters where there is the maximum available of seven years of three years' imprisonment with no release conditions. On the matter where there is only three months. That is a sentence of three months' imprisonment which is to be concurrent.

A-M J Bouchier
District Court Judge