

**IN THE DISTRICT COURT  
AT TAURANGA**

**CRI-2017-070-003972  
[2018] NZDC 489**

**THE QUEEN**

v

**GRAEME ROSS ALLEN**

Hearing: 15 January 2018  
Appearances: H Sheridan for the Crown  
J Owers for the Defendant  
Judgment: 15 January 2018

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**NOTES OF JUDGE T R INGRAM ON SENTENCING**

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[1] Mr Allen is here for sentence in relation to a number of charges of essentially two types. One type is possession of objectionable images or videos of child exploitation material and the other charges are charges of supplying an objectionable publication to another person. The maximum penalty for the latter category of charges is 14 years' imprisonment. The maximum penalty for the possession charges is 10 years' imprisonment.

[2] I mention those maximums because Parliament more recently increased those maximum penalties to reflect quite justifiable ongoing public concern as to the availability and prevalence of objectionable material, particularly that involving the exploitation of children and the ill effects on our society as a whole of that kind of material being circulated.

[3] Mr Allen pleaded guilty to these matters promptly and I have received a probation report on him which in the circumstances is pretty much as I would have expected. Mr Allen falls into a pattern, which from my experience on the bench is able to be identified as a common if not a classic pattern, of a man who becomes somewhat socially isolated and drifts into viewing objectionable material on the internet and very quickly, because of the speed of the internet these days, finds himself in possession of and distributing objectionable material.

[4] As to the nature of that material, I have not been provided with a detailed breakdown categorisation of the relevant images. Suffice it to say, however, that the Crown have advanced sentencing submissions on the basis that there was distribution of six Category A images, Category A being the worst category of material involving the depiction of serious sexual abuse of children involving penetrative sex and in some cases worse. Category B material involves something less than fully penetrative sex but is not of the same type of objection available in Category B as it is to Category A. There is also a substantial amount of Category C material which is still objectionable but a lot less serious than Category A or Category B.

[5] The issue in this case is what is an appropriate starting point for a sentence of imprisonment. Mr Allen has no prior convictions of this kind and it is clear to me, at least in relation to this type of offending, he is a first offender.

[6] I have been provided with a large number of relevant authorities dealing with sentences imposed on other people in somewhat similar circumstances. They include the cases of *Tilyard v Police*<sup>1</sup> and *Police v Crockett*,<sup>2</sup> *Webb v R*<sup>3</sup> and *Robinson v Police*.<sup>4</sup> Some of the older cases which proceeded the amending legislation at least provided some guidance but in relation to a lower maximum penalty and, in particular, I have had regard to the case of *Stewart v Department of Internal Affairs*.<sup>5</sup>

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<sup>1</sup> *Tilyard v Police* [2016] NZHC 1377.

<sup>2</sup> *Police v Crockett* [2017] NZDC 7422.

<sup>3</sup> *Webb v R* [2016] NZHC 2966.

<sup>4</sup> *Robinson v Police* [2017] NZHC 2655.

<sup>5</sup> *Stewart v Department of Internal Affairs* [2014] NZHC 2209.

[7] There is some considerable debate amongst counsel as to which is the worst case. In my view the *Webb v R* and *Robinson v Police* cases were more serious and *Police v Crockett* was probably more serious. Certainly, I take the view on the copy of the report provided to me of the Judge's sentencing remarks that *Police v Crockett* was at least slightly worse in that the number of images was greater even if some of them were computer generated, they are nevertheless images of an objectionable kind and they fall into the particular categories.

[8] The Sentencing Act 2002 requires me to hold Mr Allen accountable for what he has done and promote a sense of responsibility in him. Whilst the pre-sentence report is not exactly glowing in relation to Mr Allen's sense of responsibility, the cold hard fact of the matter is that he has pleaded guilty and pleaded guilty promptly, and he assisted the authorities in their investigations. It seems to me that he does have a proper sense of responsibility in light of those incontrovertible facts.

[9] I need to consider the interests of the victims of this offending and that is the basis on which the legislation has been enacted. I need to denounce this conduct and deter not only Mr Allen but anybody else who might be tempted to look at this type of material and take it into their possession or distribute it. The community needs protection from that kind of activity and Mr Allen needs rehabilitation and reintegration. That can be dealt with by the Parole Board.

[10] These are relatively serious offences of their kind and these charges carry very substantial penalties of imprisonment to reflect the seriousness with which the legislature requires the Court to consider this behaviour.

[11] I need to be consistent with sentencing levels imposed on others in similar circumstances, taking into account the ill-effects on the victims of this offending and the least restrictive outcome which could ever be appropriate here would be a Parole Board sentence.

[12] The aggravating features are obviously the totality of the material, the relatively large quantity of Category B and limited quantity of Category A material. The victims are obviously vulnerable. This is premeditated behaviour.

[13] Against that Mr Allen is fully entitled to proper credit for his guilty plea. I accept unreservedly that he is as remorseful as he could be here in Court today and he has generally been a man of otherwise good character.

[14] It seems to me on the basis of the authorities that I have been referred to and the statutory factors, that an evaluative approach would need to include the number of images in each category and I have taken Category A at six and they were distributed. It seems to me that that by itself would justify a sentence in the order of two to three years. The Category B material, that is about one-third of it, would by itself justify a sentence in the order of two years. Had the Category C material stood on its own it probably would have attracted a sentence between one and two years. All of this activity took place over a period of about a year.

[15] On a totality basis and doing the best I can to evaluate the quality, quantity and the distribution of the material it seems to me that a sentence of five years is an appropriate starting point, including therein all the distribution and the possession of the offensive material. I consider this to be a significant and more serious case than *Tilyard v Police*, significantly less serious than *Webb v R* and slightly less serious perhaps than *Police v Crockett*.

[16] Bearing those matters in mind, therefore, I need to allow full credit for plea which I assess at 15 months or 25 percent. I would allow a further three months for Mr Allen's remorse and co-operation with the authorities, that results in a total reduction at 18 months off a sentence of five years. That necessarily involves, therefore, an end sentence of three years and six months in relation to the most serious matters, which in my view, are the distribution charge.

[17] Accordingly, on each and every one of those distribution charges, Mr Allen, you will be convicted and sentenced to imprisonment for a period of three years and six months.

[18] In relation to the possession charges, on each of those the quantities were substantial and it seems to me that a sentence of two years' imprisonment in relation

to each of those is justifiable and accordingly you will be convicted and sentenced to imprisonment for a period of two years.

[19] I make a forfeiture order in relation to the supply and destruction order in relation to the possession.

T R Ingram  
District Court Judge