

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN  
[SQUARE BRACKETS]

**ORDER PROHIBITING PUBLICATION OF NAMES, ADDRESS,  
OCCUPATION OR IDENTIFYING PARTICULARS OF DEFENDANT  
PURSUANT TO S 202 CRIMINAL PROCEDURE ACT 2011. SEE  
<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360349.html>**

**IN THE DISTRICT COURT  
AT TIMARU**

**CRI-2017-076-001094  
THREE STRIKES WARNING  
[2018] NZDC 3444**

**THE QUEEN**

v

**[JACOB BRADY]**

Hearing: 22 February 2018

Appearances: V Skelton for the Crown  
J Lovely for the Defendant

Judgment: 22 February 2018

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**NOTES OF JUDGE J E MAZE ON SENTENCING**

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[1] [Jacob Brady], you have pleaded guilty to four charges of possessing objectionable photographs. They all involve pre-teen girls posing in a way which exposes their genitalia. You have also pleaded to one of making an objectionable recording of an indecent assault upon your own child. There is one charge of indecent assault on that child reflecting the offending in question and one of assault on a child [age deleted] which involved what you considered at the time to be disciplining.

[2] You have been given an interim order for suppression of your name. You seek a final order to protect the victims. The victims share your surname, and in those circumstances the prosecution does not oppose the application. Accordingly, a final

order is made for suppression of your name and any identifying details, but solely in the interests of these young children.

[3] You are the father of [number deleted] children aged at the time, [ages deleted]. The assault on [second victim] involved [hitting] on the hand in a way which you claimed was disciplining. There is, in a sense, a link between that offence and the offending against your [age deleted] daughter, because it indicates an environment in which you were prepared to resort to physical violence to ensure your children were compliant with your wishes. That is relevant to the issue of vulnerability, particularly of the [age deleted child].

[4] The indecent assault involved you using a vibrator on the genitalia of your [age deleted] daughter. You recorded it, hence, that charge being laid. That led to an examination of your telephone and discovery of the other photographs. With a full-time custodial sentence, registration under the Child Sex Offender registration legislation will apply automatically and the indecent assault attracts the three strikes penalties. You have no relevant previous convictions.

[5] You have tendered a letter to me today in which you say that you are deeply ashamed, you are extremely sorry, but then you seek to blame drug and alcohol use as the reason, potentially, why this occurred. You say that you wished you had sought help with drug and alcohol use earlier as you believe the offending would not have happened. The attempt to use your abuse of drugs or alcohol as a crutch to support yourself in those circumstances must be seen as indicative of your reserving taking full responsibility. You are not taking full responsibility for your actions while you seek to blame some other factor. The implication in your letter is that you consider that this was an overwhelming factor which compromised your ability to manage your own behaviour. I do not accept that.

[6] The submissions from Mr Lovely basically concede imprisonment is the inevitable outcome. He accepts registration will follow. He asks that I also take into account your financial obligations by way of fines, recognising the inevitable sentence that will follow.

[7] The pre-sentence report recommends imprisonment. It notes that alcohol is a problem but as the report writer says and as I have just said, that does not explain your offending.

[8] The submissions for the prosecution are that the aggravating factors include the extent of harm to the [age deleted] child. To sexualise a child aged [age deleted] is a significant degree of harm. This was serious offending. There is a serious breach of trust and, of course, the child is vulnerable by age and by her relationship to you. She was entitled to expect protection from you and, as I have said already, to be raised in a household where physical discipline is used to enforce your position would only have made her all the more vulnerable, if she wanted to complain of your behaviour or to attempt to stop you. I do bear in mind, there is no evidence this information was shared with anyone else.

[9] The Crown submits the starting point should be four and a half years to reflect three and a half years for the indecent assault and creating the image, and 12 months for the remaining charges. It is submitted that this was offending while subject to sentence, but I do not see that as a relevant consideration in the sentencing exercise.

[10] I accept as the Crown has reminded me, that sexual offending involving children normally attracts imprisonment and I am referred to the [removed]<sup>1</sup> decision. The Crown accepts a quarter discount for plea as appropriate and seeks the three strikes warning, the registration which would be automatic if the Crown's calculations are correct, and destruction of the phone.

[11] Neither counsel has referred me to the UK Sentencing Council Guidelines, categorising objectionable material, but Mr Lovely accepts that the recording you made in respect of your child is in Category A, and in the normal course of events, distribution of such a document could fall within the range of a starting point of four years' imprisonment. As I have said already, there is no evidence that it was distributed, but it was most certainly made and the making of the recording is little different from distributing it.

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<sup>1</sup> [removed]

[12] I treat as aggravating factors the clear sexualisation of a vulnerable child. The fact that the impact is likely to be long-lasting if not life-long lasting, and the recording in particular makes it more humiliating as the child ages. So, the impact is very high. I have referred already to the vulnerability by age and relationship and although this offending was short of penetration, it was at the higher end within the category that covers that and on that basis, I would adopt a starting point of four years if that was standing alone. For the possession charges, there is no doubt that 12 months is within the available range commonly adopted and for the assault on [the second victim] it could easily, if standing alone, attract a six-month imprisonment starting point. However, totality must be considered. I adopt, therefore, a starting point of four years' imprisonment. You are entitled to a one-quarter discount for plea. I do not see that there is anything in your letter which merits a further discount for extraordinary remorse and the end result must be a term of three years' imprisonment on most of these charges. There are some differentiations. All terms will be concurrent.

[13] On the charges of indecent assault and making a visual recording, you are convicted and you are sentenced to imprisonment for three years. On the charge of assault on a child, you are convicted and sentenced to imprisonment for six months and on the four charges of possessing objectionable material, you are convicted and sentenced to imprisonment for one year on each, all terms are concurrent. There are no other matters that I can consider as registration is automatic, this being a full-time custodial sentence. Any questions suitable to be considered for your rehabilitation are within the range of the Parole Board.

[14] Given your conviction for indecent assault, you are now subject to the three strikes legislation. I am now going to warn you of the consequences of being convicted of another serious violent offence. You will be given a written notice which will set out the warning and which will list serious violent offences. If you are convicted of any serious violent offences other than murder committed after this warning, and if a Judge imposes a sentence of imprisonment, you will serve that sentence without parole or early release. If you are convicted of murder committed after this warning, you must be sentenced to life imprisonment to be served without

parole unless that would be manifestly unjust in which case the Judge must sentence you to a minimum term of imprisonment.

[15] On the unpaid fines, and enforcement fees, those are remitted forthwith in light of your custodial sentence. I make an order for the destruction of the phone.

J E Maze  
District Court Judge