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

IN THE DISTRICT COURT
AT AUCKLAND

CRI-2015-044-001754
[2018] NZDC 521

THE QUEEN

v

[JAMES KNOWLES]

Hearing:	16 January 2018
Appearances:	R McCoubrey for the Applicant J Moroney for the Respondent
Judgment:	16 January 2018

NOTES OF JUDGE C J FIELD ON SENTENCING

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[1] Mr [Knowles], you have been found guilty by a jury, of course, and are now to be sentenced in respect of 16 charges. They are one conviction for assault on a female. This charge was laid in this way because of the age of the girl at the time. Eleven were for assault on a child, your four daughters. Four other convictions for assault with a weapon, including a wooden stick, a dining chair, a large box and a bottle on two of the daughters.

[2] The offending placed before the jury was that you assaulted your daughters in various ways, punching, slapping, smacking, throwing one to the ground, throwing objects, striking with sticks and bottles, pushing them into walls, dropping furniture on them and holding one face down on the carpet.

[3] Now these assaults happened over approximately a five year period when the girls were [ages deleted]. Those facts were, in fact, summarised by Palmer J when he heard the application for bail, and I refer to them now by way of summary.

[4] But, of course, I heard the trial, I head the evidence at trial and the way in which the girls gave their evidence and, further, the length of time that this has taken, imposing a toll on them and on you. We have finally reached the point today where sentencing can take place.

[5] I am required, in terms of the Sentencing Act 2002, to have regard to a number of factors. Obviously, the aggravating and mitigating features, if any, of the offending. The impression that I got, and the strong impression I got, was that on many of these occasions you were affected by alcohol and this does seem to have been a feature of at least some of the offending, not that that is an excuse or a mitigating feature, but it simply adds to the mix which the Court has had described to it of a very stressful time for these young victims.

[6] I have regard to the purposes and principles of sentencing reflected in the Sentencing Act and I will not itemise those in any detail but, of course, of particular relevance is s 9A Sentencing Act, where the Court must take into account the defencelessness of the victim where appropriate, any harm resulting from it, physical and psychological effects, magnitude of any relevant breaches of trust and so forth, and I have done that when considering the sentence to be imposed on you today.

[7] I should perhaps touch now upon the victim impact statements. I have read the victim impact statements, of course, and the way in which this offending has affected the children. [Daughter 1], in particular, has suffered significantly as a result of this, but I have to say that I am pleased to see the final comments in the victim impact statement from her that she feels she does not need to hide stuff anymore, she can go out and not feel afraid. Well that, of course, is good news.

[8] In relation to [daughter 2], she has been undergoing therapy but it still has been a long road for her and she has low confidence. Similarly with [daughter 3], a brief statement there, she feels safe now and that is all to the good. Similarly with [daughter

4]. These are matters the Court can and indeed must take into account when assessing the offending, the effect on the victims.

[9] I am required to note the aggravating features and to indicate the weight that I would place on each of them, it is not simply a question of counting up the numbers. However, the aggravating features include the length of time over which the offending took place, the number of children and the breach of trust, obviously, all of which are at the high end of the scale of these matters.

[10] In terms of personal aggravating features, you do have a number of convictions for violence and whilst I have no idea, I suspect there may be alcohol involved there too but that is by the by. I am not going to add to the starting point for those convictions. The Court could but I have the obligation to impose the least restricted outcome and, if it is possible, to impose a sentence without adding those then I can and should. There are no mitigating features of the offending.

[11] Among other things, I am required to take into account the comparison with other cases of a similar kind. This requires the Court to show some consistency with cases that have been before it previously. The case that is close to the factual situation here is the case of *R v M,*[1] again not entirely on all fours with this case, but it provides a useful guide to this Court in the sentencing exercised today.

[12] On the basis of that, in comparing that case with this and the aggravating features I have referred to, whilst a sentence of three and half years could well be appropriate, perhaps a little less, a starting point of say, three years, five months, having regard to the totality of the offending. I suppose it is appropriate to give some credit, so far as I am able, for the fact that you have been on restrictive bail conditions although, as Mr McCoubrey points out, there have been breaches, although I understand you dispute at least one of those but, perhaps, an allowance of say, two months for time spent on bail awaiting resolution of this matter. That would then leave a total available sentence of three years and three months.

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[1] *R v M* [2000] 2 NZLR 60 (CA)

[13] I deal with you then in this way. On the charges of assault with a weapon you are sentenced to imprisonment for three years and three months. In respect of each of the charges of male assault female and assaulting a child, you are sentenced to one year's imprisonment. Those sentences are, of course, concurrent, so that the sentence is one of three years, three months.

C J Field
District Court Judge