

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

FINAL ORDER SUPPRESSING DEFENDANT'S NAME FROM PUBLICATION

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**CRI-2017-009-010393
[2018] NZDC 4404**

THE QUEEN

v

[KANE DOTSON]

Hearing: 7 March 2018

Appearances: S Bicknell-Young for the Crown
A N D Garrett for the Defendant

Judgment: 7 March 2018

NOTES OF JUDGE D J L SAUNDERS ON SENTENCING

[1] Mr [Dotson], you have pleaded guilty to charges of unlawful sexual connection and indecent act on a child under the age of 12.

[2] The offending is said to have occurred between 1 October 2015 and 30 June 2016 and the charges are expressed as representative charges, meaning that these were not just several isolated incidents but ones that were carried out over a period of time.

[3] You were first interviewed by the police in November last year. You appeared before the Court I note on 21 November and you entered guilty pleas on 17 January this year. You were given a first strike warning under the legislation by another Judge

who took your plea and you were permitted to remain on bail pending the outcome of sentencing today.

[4] A pre-sentence report has been prepared. There have been a number of documents, character references and medical information placed before me as well as submissions both from the Crown and from your lawyer Mr Garrett.

[5] I start by recounting what are the relevant facts upon which a sentence is based. You are noted as having befriended the family of the complainant [date and location deleted]. You helped them with accommodation and work applications as well as offering to look after the children. The victim's family visited you regularly at your home and on occasions you would look after the complainant and on some occasions you went on outings with the child.

[6] Clearly you gained the trust of the parents because they were prepared to leave their daughter with you for purposes of child care and that developed into a situation where you were able to take advantage of the affection that was clearly being displayed, perhaps, as Mr Garrett said, mutually between her and yourself. I am talking of that affection in a general sense that she saw you as a grandfatherly figure who was being kind to her family.

[7] The allegations and charges against you involve allegations that you kissed the child on her mouth and placed your tongue into her mouth. You had her touch your penis with her hand. You touched her on the outside of her vagina and you unlawfully had sexual connection when you performed oral sex and digital penetration of her genitalia. The offending, I am told, mainly occurred in a bedroom at the house that you occupied although there is said to be occasions when you took her on an outing to feed ducks or that there were occasions when you were in the garage at your property carrying out your hobby [details deleted].

[8] The offending occurred over several months and the cumulative effect of your offending has been fully documented in the victim impact statement that was read to the Court today and which Mr Garrett says he has already read to you and you understand the parents' or mother's concern. There is a specialist report from Lucy

Matthews from START programme and again it is clear that this young woman will need ongoing support into the future given the trauma that has occurred.

[9] In speaking to the police, you acknowledged your offending had continued over several months. You are said to have told them that you were ashamed of it but that you could not stop yourself and acknowledged that you had what you called “a sickness”.

[10] The concerning factor about the revelation that has been made that there was an earlier occasion that you attended the STOP programme is that you had clearly had the ability of assistance in the community-based programme referred to as STOP where you should have been able to recognise the signs before it developed into further offending. I accept that that reference to STOP did not result in any convictions and so that from one perspective you are appearing before the Court today at [over 80] with no previous convictions but I cannot be blind to the fact that there has been the reference to the earlier treatment that you accepted as a result of a complaint.

[11] The Crown’s position is, and having filed full submissions on this, that they have referred me to a case that is referred to by initials *R v A M*¹. That is referred to as what we call a guideline or tariff case which sets out the factors that the Court must take into account in considering a starting point for sentencing. The unlawful sexual connection charges of which there are two and are representative, are the lead charges. They carry a much heavier maximum penalty than the indecent act but the indecent act charges form part of the whole factual scenario that is before the Court. Based on the analysis of the case of *R v A M* the Crown would see that this falls within band 2 of that particular case. The Crown submits that the factors that take it into band 2 which is to establish a starting point in the range of four to 10 years’ imprisonment are the factors of breach of trust, the scale of your offending going over several months, the vulnerability of the victim who was at that stage at a quite age and certainly well under the age of 12 and that there was, the Crown says, some premeditation in relation to this.

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

[12] Mr Garrett on your behalf has accepted the factors of vulnerability of a young child, the harm that has occurred to the victim, the scale of the offending being over a period of at least six months and the breach of trust. As to premeditation, Mr Garrett says this was not a case which so often the Courts are faced with where there is a grooming of children by the provision of inducements or indeed showing them pornography to normalise what has happened. He says that if there was any premeditation, it was not to a significant degree. My thoughts in relation to that is that of course you were aware when this offending occurred that you had a problem and had been a person who had attended the STOP programme. You should have had the skills and the ability to have recognised the dangers that you were getting into when the boundaries were blurred and you allowed what may have been seen as affection between the two of you to develop into an intimate sexual act.

[13] Based on the submissions that have been made I find the Crown are correct to identify this as falling within band 2 of the case *R v A M*. Taking the factors that have been mentioned into account, namely, the age of the child, the scale of the offending, the breach of trust, the element of knowledge and premeditation, I consider that a sentence or a starting point in this case would be in the range of at least six years' imprisonment.

[14] For the indecent act charges concurrent terms of four years would be seen as appropriate and that is for the starting point to be at six years. From that starting point I am required to make some allowance for personal factors. Your age at [over 80] and given that the offending occurred when you were in your late 70s, is a factor that I can give some credit to along with your expression of being ashamed, remorse and your apology that you are offering to the family. Those factors are taken into account first and then what is applied is the full credit of 25 per cent for your guilty plea which came at an early opportunity.

[15] Dealing then with your age at [over 80] you clearly were in your late 70s when this offending occurred. You have attended, as I have recognised, the STOP programme previously and while I cannot regard you as somebody as a complete first offender, I am able to accept that you have no other previous convictions for dishonesty and that you had lived a life free of crime before this incident occurred.

Your health has been commented upon and I can assure you that the prison authorities are well aware of the need to provide a proper level of care and attention to you and that in weighing up the credit to be given to the factor of age, I allow for 18 months as a credit that can be applied as a reduction from the starting point of six years. I accept that in addition to that factor you have expressed some remorse for your offending and that the letter of apologies, whether they are accepted or not remains to be seen, but you have expressed, in my view, appropriate remorse and shame for what has occurred. A further six months credit is permitted in relation to that. That brings the sentence back to one of 48 months before applying the 25 per cent credit for the guilty plea. The end result is that a sentence of three years' imprisonment is appropriate. I do not consider that it is necessary to impose a minimum non-parole period and that you will be able to be considered by a Parole Board at the usual point in the sentence. What I do, however, recommend to the Corrections authority is that you be considered for the Child Sex Offender Programme that is run at Rolleston Prison and that you be assessed as being suitable for that given your prior attendance at STOP programme and the need for there to be a further intervention.

[16] The final matter that I need to address today is the question of whether there is a final order for suppression of your name. There has been an interim order in place till today and the starting point in relation to suppression is that the principles of open justice in New Zealand is very clear. There is a right of the public to know the people who come before the Court and who are being sentenced on serious charges. The protection of a victim or complainant is enshrined in law and there can be no publication of the victim's name or circumstances that may lead to her identity and in that regard I am conscious of comments that I have made about [details deleted] and perhaps those comments should be the subject of a further order in relation to suppression. The principal grounds that are advanced are not so much your comfort or health but that of your family members and there is medical information that I have been made privy to concerning your family members – [details deleted]. The question of whether or not somebody is embarrassed by the publication of name is said not to be in itself a matter that would cause extreme hardship. What I am, however, required to look at is whether the impact of publication of the name which is, I accept, unusual as there will not be many persons with that name in the phone book or in the community, will be whether it has sufficient impact on the recovery and health of your

[close family member] whose health position has been commented on by Dr Binnie. I am conscious of the comments that have been made about your wife and [her health issues] and also the [second close family member] and his recovery from an operation and his situation. Those matters perhaps just add to the overall picture that it is your [close family member's] position that does cause me the concern as to whether or not publication about the circumstances of this is going to create extreme hardship for [the close family member] in the course of [the close family member's] recovery. I have reached the view that it just crosses that threshold and while I am conscious of the desire of the victim's family to see your name published, they should remain confident that your name will be registered on the Sex Offender Register and that the police have made their appropriate enquiries into your situation. It is often trotted out that it may bring forth further victims but in the course of the submissions I have heard I do not believe that that is a likely result in terms of should there be publication of your name. The end result is that I have been brought to the position where I will grant a final order for suppression of your name on the basis that it would, in my view, reach the threshold of extreme hardship to your immediate family but more particularly your [close family member] who is having [their] own health struggles and this, in my view, would potentially, as Dr Binnie said, set [them] back in [their] recovery. So for those reasons your name will be finally suppressed but there will be registration of your name on the Sex Offender Register.

[17] The end result Mr [Dotson] today is that there is a term of three years imprisonment imposed. That will be imposed on each of the charges and there is a recommendation that you be assessed for the Kia Marama Programme at Christchurch Prison.

D J L Saunders
District Court Judge