

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 NAPIER**

**I TE KŌTI-Ā-ROHE
KI AHURIRI**

**CRI-2017-041-002461
[2018] NZDC 23037
THREE STRIKES WARNING**

THE QUEEN

v

[GREG MOODY]

Hearing: 1 November 2018
Appearances: S B Manning for the Crown
E J Forster for the Defendant
Judgment: 1 November 2018

NOTES OF JUDGE A J ADEANE ON SENTENCING

[1] Mr [Moody], you have been found guilty by a jury of charges of burglary, detaining, rape specifically, rape representatively, assault with intent to injure, a further charge of kidnapping and one of threatening to kill.

[2] These are unhappy circumstances where you and the complainant had shared an intimate relationship in approximately [period deleted] preceding your offending but you had recently parted in circumstances where she had apparently rejected you and you were having difficulty reconciling yourself with the situation.

[3] While living apart from whatever motive, whether it was possessiveness or jealousy or desire to control her life, you stalked her home where on the night in question she was staying alone. You got inside in circumstances unknown. It is not known how long you were there but you were watching the house from late in the evening before, having got inside the house you burst open the bedroom door which had been locked and you then embarked on a process of persuasion and coercion which ended in an act of consensual, and I infer reluctant consensual, intercourse with the girl. That was not the subject of any charge against you of a sexual kind but shortly, and despite her express verbal dissent, you then engaged in a second act of intercourse, which the jury were quite satisfied was a specific act of rape, and over a period of several hours following there followed further acts contributing to the representative count of rape.

[4] During all of this she was effectively detained until an interlude when in order to get out of the house she agreed to accompany you to a restaurant. After that, however, you returned to the vicinity of her home, she was again physically attacked. She was strangled and forced into her motor car and was then detained for a period it seems of some hours while been driven around [location deleted] by you and in particular to a remote beach location. During this there were threats which in the circumstances must have been chilling and she was not finally returned to her home until after an ordeal which had extended for more than 12 hours since you broke into the bedroom in the early hours of the morning.

[5] The emotional effects of all this on her have been devastating as the victim import report shows. I do not intend to go into those in open Court any further.

[6] The alarming feature of the case is the difference in perceptions on either side of this discussion and the fact that the jury accepted beyond reasonable doubt that her perception was the correct one. Accordingly, yours is the wrong perception and it is alarmingly wrong because even until the recent Probation report was completed you had shown an ability to turn each component part of the narrative into one where you were the victim and she was the abuser. I now see that you have stepped back from that position in your letter and that may be important in a way which I will mention in a moment.

[7] At [age deleted] years of age, you present with a history of abusive conduct to women represented largely by convictions for assault on females but you are on the other hand [description deleted] of some ability and the prospect that you must serve a lengthy prison term for this matter is now an extremely unfortunate one, not only from your point of view, but from the community's point of view.

[8] The matter sits firmly in band 2 in *AM* which mandates sentences between seven and 13 years imprisonment. Here it follows that I must disagree with the position adopted by the defence and Mr Forster responsibly submits that other views are available.

[9] On the other hand, in a case like this extending over a period of time but nevertheless between people who are familiar with each other's company. I say simply this, that care needs to be taken in over analysing each of the component aggravating features and uplifting for each of them least they result in an end sentence which is disproportionate to the bigger picture.

[10] Essentially this was a single conduct involving possessive and controlling actions by an ex-partner who was not coping emotionally with a situation in which he found himself and was quite prepared to resort to detention and non-consensual intercourse with his ex-partner in order to give vent to his feelings. But those are the very features that take it out of category 1 and its position in category 2 ought not to over emphasise each of those component aggravating matters. The Court still needs to stand back, take a look at the matter in totality and fix a proper sentence, and in my view, that sentence is one of nine years' imprisonment.

[11] The crown suggests a minimum non-parole period may be justified here. Certainly, all of the provisions of s 86(2) are incumbent on this Court when sentencing for this kind of offending but there is also under that section an overarching issue around the extent of the risk the defendant represents. I compare here the recent case in the Court of Appeal of *Tamati* where a non-parole period has been upheld in respect of someone who presented a very broad based and general risk to this community.

[12] Obviously, the risk that you represent will affect women with whom you might form future relationships, but I am obliged to balance with that the fact that there is no history of sexual violence let alone generalised sexual violence. Your history is relationship specific and during your time in prison you will be offered, during what still must be a lengthy sentence, appropriate re-education in your relationships with individual women. Your success in that regard will be for the Parole Board to judge, hopefully the attitude to be seen in your most recent letter now shines through. And the attitude you are able to take to your sentence.

[13] In the circumstances, I decline to fix a minimum non-parole period. You are sentenced in the following way, all sentences concurrently:

- (a) For burglary, two years' imprisonment.
- (b) For sexual violation on each occasion, nine years' imprisonment.
- (c) For detaining, two years; imprisonment.
- (d) Assault with intent to injure, 18 months' imprisonment.
- (e) Threatening to kill, one year imprisonment.

[14] An effective sentence of nine years' imprisonment. You will go to the Parole Board in the usual way. A protection order is made unopposed.

Mr [Moody], sexual violation and kidnapping are both three strike offences. On the commission of a first, you will be sentenced according to the circumstances as you have been today and you will be eligible for parole in the normal way. If thereafter you commit any three strike offence, you will be sentenced according to the circumstances but get no parole. If after that you have committed a third three strike offence, you would not be sentenced in this Court but instead sent to the High Court and there, absent special circumstances sentenced to the maximum term which the

law allows to be served without parole. The sentence imposed today however, I emphasise, will entitle you to seek parole in the usual way and your success before the Parole Board will very much be determined by the way in which you approach your sentence in the next year or two.

A J Adeane
District Court Judge