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.

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

ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF DEFENDANT PURSUANT TO S 200 CRIMINAL PROCEDURE ACT 2011. SEE http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360346.html

IN THE DISTRICT COURT
AT PALMERSTON NORTH

CRI-2016-054-003502
[2018] NZDC 10336

THE QUEEN

v

[SEAN CARTWRIGHT]

Hearing: 18 May 2018

Appearances: J Harvey for the Crown
S Hewson for the Defendant

Judgment: 18 May 2018

NOTES OF JUDGE J D LARGE ON SENTENCING

---

[1] [Sean Cartwright], you appear for sentence today on one charge of sexual violation by unlawful sexual connection, one charge of indecent assault on a young person under 16 and a representative charge of indecent assault on a child aged between six and 12 years. The background to the offending has been touched upon by both counsel in their submissions and I am obliged to really summarise that so that in

due course the Parole Board can have the basis upon which the sentence I am about to impose on you has been structured.

[2] A brief background is that between [date range covering six years deleted] the victim, who is your daughter then aged between six and 12 years, and you, during that period, on numerous occasions touched her vagina, her bottom, her breasts and you instructed her to fondle your penis. On one occasion you pulled the victim on top of you and rubbed your penis between the victim's legs, this activity continuing for up to an hour.

[3] In [date deleted] when your daughter was [under 16] you and she were in a [vehicle] travelling between [location 1] and [location 2]. You instructed her to take off her pants while you were touching her thigh. She refused to do so and you drove back to [location 2].

[4] On the evening of [date deleted] you and your daughter got into your [vehicle], after you had been smoking cannabis together, and drove towards the suburb of [deleted] during which you instructed her to remove her underwear. You then told her to get into the back of the [vehicle] and put a beanie over her eyes so she could not see. She complied. She heard an unknown male person arrive and felt people begin touching her and inserting fingers into her vagina. She is unsure which person did which action from that point onwards. She felt fingers inside her vagina and a penis inserted into her anus. You knelt over her head and inserted your penis into her mouth. That behaviour is really appalling. There is no other word that can describe it.

[5] Looking at the submissions made the Crown have submitted that the Court should apply an approach from *Baldwin v R*.[1] effectively allowing the Court to assess all of the circumstances of the offending against the victim as a whole as opposed to sentencing on a lead charge, which would be the sexual violation by unlawful sexual connection, and then applying an uplift for the other offending. I think in the circumstances of this case, given the period over which the offending occurred, that the *Baldwin* approach is appropriate and I intend to do that. Of course what I must do

[1] R v Baldwin CRI-2008-004-23804 20/4/2010 HCT Auckland

at that point is ensure there is no double counting or adding at a later point the factors which I have assessed in setting the starting point.

[6] The lead case referred to by both counsel is *R v A M*[2] that identified factors which are relevant here, degree of violation, violence, your daughter's vulnerability, not just her age at the beginning of the offending but also her mental capacity, and of course your position of trust, your position as her father, and to a limited degree the factor of intoxication on the night of the sexual violation.

[7] I make that comment because I am told that you have been already sentenced by a Court for [details deleted] and so that factor while requiring to be mentioned does not weigh heavily in the assessment of the start point which I will come to shortly.

[8] I am obliged to take into account your daughter's age when the offending commenced. She was [age deleted]. [Deleted] years later the final violation occurred when she was [age deleted].

[9] Your daughter had been [details deleted]. That affected her in many ways throughout her life. Primarily she was very trustworthy and very naïve. The trusting and her naivety increased her dependence on [details deleted] and it made it easier for her to be taken advantage of.

[10] I have referred to the breach of trust. I am obliged to look at the degree of planning and premeditation and indeed there was that particularly on the night of the sexual violation when there was obviously the intoxication of the complainant, the phone call to someone enquiring as to whether that person was still keen and the text referring to your putting her on the block. All of those factors are matters which I have to take into account.

[11] The victim impact statements which I heard at the beginning of the sentencing indicated to me that notwithstanding your actions toward your daughter she and her grandmother, your mother, have an incredible capacity to be forgiving. Your mother acknowledged firstly that she loved you and has loved you since she birthed you. She

[2] R v A M [2010] NZCA 114

still loves you but she has had to acknowledge, as indeed you do and have by your guilty pleas to these, that you were a predator. You were an offender against someone who needed your protection rather than your abuse.

[12] The victim impact statements made sad reading because your daughter and your mother have been socially isolated by others in the community who believe that you are not capable of this offending. The clear message they must receive is that you are capable of the offending and you have acknowledged that offending and that is what needs to be out there in the community so that the healing that is required and talked of in the victim impact statements can commence.

[13] In the pre-sentence report Mr Hewson referred to the ACC counselling which you are endeavouring to commence. He mentioned that the restorative justice could not occur because it was not the appropriate time. That is probably a very realistic submission and you can get no debit, so to speak, for not engaging in restorative justice.

[14] However, it is important, I think, because at this stage it is clear from the materials before me that you have not shown remorse, there has been no show of any empathy, no understanding of the impact your offending has had on your daughter. You groomed your daughter and you were continuing to groom and effectively use her. She has, unsurprisingly, suffered post traumatic distress disorder.

[15] What I must do is look at the appropriate starting point for the offending. I accept, when I referred to the ACC counselling which you are about to commence or have just recently commenced, that you yourself have a great deal of baggage which you need to unpack. It may be that when you start that process you will develop some insight into the effects your actions have had on your daughter and your mother and your wider family. At the moment it is a family that is completely fractured and your mother, in her final comments of her victim impact statement, said that she hoped that you were the glue to put the family back together again. That is something that you will have to consider and discuss with counsellors and the like.

[16] Clearly the sentence that I am about to impose on you is well beyond home detention and it will be for the Parole Board to determine when you should be released. I have to consider, and I will shortly, whether or not to impose a minimum non-parole period. The Crown seek 50 percent of the end sentence by way of minimum non-parole period.

[17] Both counsel agree that your offending is in band 3 of *R v A M* and I think that is exactly where the offending does lie. Band 3 has a range of 12 to 16 years' imprisonment. The Crown say that should be mid. Mr Hewson submits that it should be at the lower of band 3 but that in itself is a sentence of 12 years' imprisonment. I think, taking into account the factors that I have mentioned, particularly the grooming, the extent of the offending, a start point of 13 years' imprisonment is appropriate.

[18] There is no ability to give any discount for remorse because sadly there is none. What I do have to now have to consider is what discount I apply in terms of *Hessell v R*[3] given your guilty pleas. Mr Hewson has explained the background to your pleading guilty just prior to the trial commencing, he having come on board as new counsel in December or thereabouts of last year. Your plea was entered on 16 March.

[19] I think there should be a discount of in the vicinity of 20 percent, a discount of 30 months, which brings me to an end sentence of 10 and a half years' imprisonment. Given the underlying factors which Mr Hewson has referred to in terms of your ACC counselling I think he is correct that the Parole Board will need to see a great deal of progress from you before it considers your release. I would doubt it would be available on your first attendance at the Parole Board. You have a great deal of unpacking and re-packing to do before you would be suitable for release. I am not minded and will not in those circumstances impose a minimum non-parole period, that will be a matter for the Parole Board as to when you are released.

[20] The one remaining matter is name suppression. Clearly the victim's name is suppressed by law. The Crown have properly made enquiries of the victim as to

[3] Hessell v R [2010] NZSC 135

whether or not she would wish your name to be suppressed. She has indicated in a job sheet prepared and provided to me today that she would oppose permanent suppression of your name. She says that everyone who knows her knows about the charges, that other people in the family circle consider she is a liar. She considers that she is the target of threats and harassment by families and associates of yours. She is conscious that if your name is not suppressed her identity would not be able to be protected in the way it otherwise would. She says she does not mind this. She said that she wants people to know what you are guilty of and what you are capable of and that she is adamant in that stance.

[21] The Crown have submitted that the options available to the Court really are these, either your name is permanently suppressed in which case there is no potential risk to the victim or there is a suppression made of her name and of any factors relating to your relationship to her. That would allow your name to be published and that would achieve what the victim has said she wants.

[22] I completely understand her position and I accept the basis upon which she is saying your name should be published. I am not prepared, however, to publish your name because it will lead to identification of her. I think she needs to be protected and it may be, given the factors that I have referred to earlier, that if she is able to be identified, not necessarily in the immediate future but in the longer future, there may be ramifications and I think permanent name suppression is appropriate for her sake, not for yours.

[23] So the sentence is 10 years and six months' imprisonment.

[24] The sentence of community work is cancelled.

[25] The Crown are also seeking a protection order in favour of the victim. I make that order pursuant to s 123B Sentencing Act 2002. You have received your strike

warning. That was a conviction, it does not happen again.

J D Large
District Court Judge