

**IN THE DISTRICT COURT
AT NEW PLYMOUTH**

**I TE KŌTI-Ā-ROHE
KI NGĀMOTU**

**CRI-2021-043-000626
[2023] NZDC 1384**

THE KING

v

MATTHEW PAUL JOHN GORDON-STABLES

Date of Ruling: 27 January 2023
Appearances: H Bullock for the Crown
P Keegan for the Defendant
Judgment: 27 January 2023

**RULING OF JUDGE A S GREIG
[ON S 106 APPLICATION]**

[1] I am reserving the right to add to this, possibly considerably, when I come to actually finally sign off on this decision and that is because my preliminary thoughts have had to somewhat shift based on submissions made by the Crown in court today, which were not available to me before this hearing.

[2] Mr Gordon-Stables has pleaded guilty to 10 charges of possessing objectionable material under s 131(1) of the Films, Videos, and Publications Classification Act 1993. This is the significantly lesser of the two charges available for this type of offending and it is punishable by a fine only. The charges were amended from the more serious charge of this nature, which carries a maximum 10 years' imprisonment, very shortly before trial.

[3] I accept what Mr Keegan has said, which is that because the prosecutor at the Crown Solicitor's Office in New Plymouth was in the process of being appointed to the bench, the resolution of this matter in the form of the summary of facts was not available really until the last minute and was not available at the time that Mr Gordon-Stables pleaded guilty.

[4] The amended summary, which is the basis on which I must dispose of this, reads as follows:

Child exploitation material is the consequence of the exploitation or sexual abuse perpetrated against a child. Any publication that promotes or supports or tends to promote or support the exploitation of children or young persons for sexual purposes is deemed to be objectionable publication in New Plymouth. Mega relates to www.mega.nz, which is a secure online cloud storage and networking service, where users can create accounts, share digital media and links to images, movies and documents. They can also communicate on this platform via private messages.

On 26 June 2019, the defendant created an account on a cloud service known as Mega. He did so using his email address. In around July 2019, the defendant was sent a number of objectionable images and videos depicting child abuse and exploitation by a person or persons unknown. The collection of material contained 508 videos and 178 images files, nearly all of which depicted child sexual abuse and exploitation. These files included ones by file names including: "10-year-old girl fuck and cum," and "baby..."

These files remained in the defendant's possession until his account was suspended on 23 October 2019 by Mega NZ. A synopsis of the content in these files is contained within an appendix that is attached to the summary of facts. The defendant's possession of this material was identified when the police executed a search warrant in April 2021 and a forensic analysis of Mr Gordon-Stables' cellphone was made.

[5] The appendix indicates items such as, and I am not going to go through the whole lot, a four-second video of a baby girl aged less than one year being digitally penetrated by adult sized fingers, an adult male being filmed over one minute and 50 seconds engaged in sexual activity by way of penial penetration of a female child's vagina, penetration of her anus and the oral penetration of a baby's mouth, that is a girl between the age of one and two. There are other images of babies and of elderly European men penetrating Asian children.

[6] There is a detective in Timaru, Mr Gordon-Stables, who in his off-duty time, when he is on leave, volunteers for an organisation that frees children from sexual

slavery and on one of these trips he went to, I think it was Thailand. He posed as a sex tourist, which is the usual way, identified a child that could be freed, developed an escape plan along with all the other people that support him and eventually helped that child to escape.

[7] She was placed somewhere where hopefully she could be helped to recover from her appalling experience and he then went back to work as a policeman. A few months later he saw an image of this same child being treated in the way described and it almost broke him and it underlined to me, because I had always heard it said but had not come so close to actually experiencing the reality of this; that these children, every time an image is created, is a victim created for, what is usually European men's, sexual gratification.

[8] So to return to the narrative, the charges were significantly reduced from the 10-year maximum to being punishable by a fine only and a plea was entered immediately.

[9] Mr Gordon-Stables has got some personal characteristics which I must bear in mind. He suffers from a mild intellectual disability as well as Asperger's syndrome and attention deficit disorder. He has no previous convictions, he has never been diverted.

[10] The pre-sentence report describes Mr Gordon-Stables as having a lifestyle that could be described as oppressively quiet, slavishly demeaning and consists of mainly looking after his invalid mother and pushing her around town in a wheelchair. Because of the care that he is obliged to provide, he has never had the opportunity to develop the confidence needed to make an independent life for himself.

[11] During interview, Mr Gordon-Stables informed the probation officer that he would welcome any assistance he can get to normalise his life around employment and a driver's licence and I think at the moment your ambition is to work as a night shelf filler at supermarkets. You did tell the probation officer that you understood why the law regards possession of child sexual images usually as very serious, although clearly less seriously in your case.

[12] Really posited on the basis that you did not have knowledge that this material was in your possession, Mr Keegan advanced a compelling argument that your culpability is inherently low, given what I have just mentioned and also given your circumstances and limitations, which reduces your level of culpability even further. Mr Keegan submits that you did not want, nor did you seek out the objectionable material and Mr Keegan points to your lack of previous convictions. So for that reason he says that the gravity of your offending is at the very lowest level.

[13] As to the consequences, he points out that you will not always be looking after you mother and pushing her around in a wheelchair. You yearn for a different life, one that will eventually be available to you. You want a job but your lack of any previous employment, he says, would be further hampered when a prospective employer sees the words “possession of objectionable material” on your record and Mr Keegan doubts, and I think correctly, that even if someone capable on your behalf was to explain to a potential employer what that was all about, it is going to create a problem, even if you are stacking shelves in a supermarket. A lot of the other people who are doing that are teenagers, kids, schoolkids and that will send alarm bells to an employer.

[14] I accept, and regard it as complete nonsense anyone who says to the contrary, that there are general consequences of a conviction. Of course there are. It is the whole purpose of the thing. We used to brand people’s faces and cut their noses and ears off and this is the modern equivalent. It is to provide a warning. It does create a stigma and a conviction of this nature is particularly stigmatising.

[15] So Mr Keegan says that the test set in ss 106 and 107, that the consequences of a conviction are disproportionate to the gravity of the offending, is well met. He also points to the remedial steps that you have taken since this and in particular you have referred yourself to WellStop and he assures me and I accept this Mr Keegan, that you will continue at WellStop regardless of the outcome.

[16] I have mentioned that the legal analysis of this charge has been addressed in subsequent submissions by the Crown, in material that was not available before I came into the courtroom. It is the decision of the High Court, Nicholson J in *Meyrick v Police* CRI-2004-019-002619 and the High Court there set out the legal

requirements, the legal elements of this charge and they are that you had actual or potential control over the material, you knew what it was that you controlled, you had the intention to exercise control and that you had possession voluntarily.¹

[17] Because if this offence could be committed without knowledge then I could send this sort of material to my enemy and then tell the police it is on their phone and they would in theory commit the offence; they might have a reasonable excuse I suppose. However, to commit this offence certainly does require a degree of knowledge and by your plea of guilty I have to accept that that is what you had.

[18] The Crown submissions certainly do accept that the gravity of the offending can be considered low but say the Crown, the culpability level given that this charge is a fine only is always going to be low and given your circumstances and limitations, the culpability is even lower. The Crown goes on to cite a number of other cases that are relevant and to which I have had regard.

[19] I confess that I am troubled by this and it is very, very finely balanced but in the end this material is so objectionable and for good reason as I have tried to spell out to you, that whilst I accept that this is going to be quite a severe mark in terms of how the rest of the world might view your conviction, I just cannot say that the consequences outweigh the severity of the offence. I am going to convict you Mr Gordon-Stables but discharge you without further penalty.

Judge AS Greig
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 31/01/2023

¹ *Meyrick v Police* HC Hamilton [2007] CRI-2005-419-000058.