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. SEE http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html

NOTE: INTERIM ORDER SUPPRESSING NAME AND IDENTIFYING PARTICULARS OF THE DEFENDANT UNDER S 286 OF THE CRIMINAL PROCEEDURE ACT 2011. PUBLICATION OF OCCUPATION PERMITTED.

IN THE DISTRICT COURT
AT WHANGANUI

I TE KŌTI-Ā-ROHE
KI WHANGANUI

CRI-2023-083-001307
[2024] NZDC 25973

THE KING

v

[S]

Hearing:	25 October 2024
Appearances:	C Wilkinson-Smith for the Crown J Waugh for the Defendant
Judgment:	25 October 2024

NOTES OF JUDGE J M MARINOVICH ON SENTENCING

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[1] Mr [S], you appear for sentence today in relation to two charges, those charges being:

(a) Meeting a young person following sexual grooming, which carries with it a maximum penalty of seven years' imprisonment, and

(b) grooming for sexual conduct with a young person, which carries with it a maximum penalty of three years' imprisonment.

Sentence indication

[2] In terms of those two charges, I gave you a sentence indication on 19 July 2024. In relation to that sentence indication, I heard submissions from counsel and was referred to a number of cases which provided some assistance in setting a start point for your offending.

[3] At that sentence indication I got to a point where I adopted an overall start point of 32 months' imprisonment. There you were informed that should you plead guilty then you would be afforded 25 per cent, or eight months. That, on that calculation, got you to 24 months' imprisonment. You accepted that sentence indication.

[4] For the purpose of sentencing you today it is important that I go through the facts and the information that I have before me for sentencing. Before I do that I would like to acknowledge both victims, who are present in court today and have had the courage to read their victim impact statements to the Court. I had read those statements before you read them aloud and certainly your words do not get lost on me. I would also like to extend my acknowledgement to the victims' family, who are in support of them. The sentencing process involves me looking at the law and applying the law with respect to the sentencing process. I am unsure whether this process will bring any closure for you. I acknowledge the harm that you all will have experienced or felt, whether it be personally or through supporting the primary victims, and I am sure that this process will not bring that impact to an end but you have support that no doubt you rely on and will hopefully assist you moving forward. It is certainly clear to me that you are both intelligent and capable young women.

Summary of facts

[5] In terms of the facts for sentencing, they tell me the following. That between 2010 and 2015 you were [a teacher] at [school A]. The victims [victim 1] and [victim 2] were students at [school A] at this time. [Victim 1] was aged between 12 and 17

years of age when she attended high school. [Victim 2] was aged between 13 and 17 when she attended. Just for the record I am referring to initials rather than names purely so when it is written down your suppression remains tight.

[6] In terms of the complainant [victim 1], the circumstances are as follows. [victim 1] met you on her first day at [school A] in 2011, when she was aged 12 years old. You taught her for a short period of time in 2013. In 2011 you began communicating with [victim 1] via text message. Between 2011 and 2015 you would also talk to [victim 1] when you saw her at school. You would often excuse [victim 1] from class in order for you and her to spend time together and you would compliment her on her appearance and her intelligence.

[7] In 2012, when [victim 1] was 13 years old, you persuaded her to go [activity deleted] with you one morning before school. This was not part of an organised school activity. Later that year, for her birthday, you invited [victim 1] into your classroom alone and gave her a gift. The gift was a photograph of people [activity deleted], however, you had photoshopped [victim 1]'s face onto the photo.

[8] In 2013 you persuaded [victim 1] to go on another [activity deleted] trip with you, this time to [a nearby city]. Again, this was not an organised school activity. Shortly after this trip you and [victim 1] stopped communicating regularly, though communication commenced again in 2014.

[9] In 2015, when [victim 1] was 17 years old and in her final year at [school A], you and her began to have sexual intercourse regularly. You also sent her notes telling her you loved her and asked her to run away with you. Your sexual relationship continued with [victim 1] on her leaving school.

[10] In relation to [victim 2], she started [school A] in 2010, when she was aged 13 years. [Victim 2] met you in 2012 when she was in your [class]. During this year [victim 2] started spending her lunch breaks with you in your classroom. You would give [victim 2] lollies and told her to use the excuse of needing stationery so she could go to you to get them.

[11] You would often excuse [victim 2] from her classes in order to spend time together. You and [victim 2] watched videos on your computer. You bought [victim 2] gifts, would take her out to buy food and would compliment her on her looks, telling her she was pretty. [Victim 2] turned 16 years at the beginning of 2013 at which point you began communicating with her via text message and Facebook Messenger. You also began spending more time together. So those are the facts on which I sentence you.

Aggravating factors

[12] In terms of aggravating features of the offending I determine the following to be present:

(a) Firstly, there is the impact on your victims. Those statements, as you will have heard, have been read. It is fair to say the impact has been significant for both. Your conduct impacted on their schooling, their social lives, relationships, and their experiences through adolescence. I simply will not do justice by reading portions of those statements out again but as I said it is clear that the impact has been significant.

(b) A second factor I take into account is the scale of offending. This is present in terms of the length of time over which you groomed [victim 1] and the fact that there are two victims.

(c) The third factor is the vulnerability of the victims. Both young women were at an impressionable and somewhat emotionally vulnerable stage of their lives when exposed to you. The legislation that has caught you is there to protect young girls from predatory behaviour. The victims' vulnerability however is linked into the power imbalance that is present between adult teacher and young person student. Their vulnerability increases as the grooming progresses as they emotionally attach themselves to you. This ultimately gives you control. I note in relation to [victim 1] you told her you loved her and wanted to run away with her. Their vulnerability meant, emotionally, they were not mature enough to resist your seduction.

(d) The fourth factor is your grooming of [victim 1] was ultimately successful. It ultimately led to a sexual relationship that commenced while she was still a student in her last year, and you were a teacher. I accept that does not form part of your offence; however, it does show that your persistent and calculated grooming achieved the outcome that you ultimately wanted.

(e) The fifth factor is the gross breach of trust. You were a teacher and they were students. You were entrusted by your school and their parents to teach, to help, and to grow young people. The victims' parents placed their children in your school for that to occur, not for you to use it as your grounds to prey and groom.

(f) The sixth factor is premeditation. You persistently worked on each victim obtaining cellphone numbers, communicating, removing them from class to spend time, complimenting the victims on their looks, providing gifts and isolating them. I note from the summary of facts in relation to [victim 2] your communication with her increased, as did the time you spent with her when she turned 16.

[13] So those factors all informed me as to the appropriate start point based on your culpability. As I said, I adopted a start point of 32 months' imprisonment.

[14] Part of the sentencing process provides me with information that I assess and determine whether there are other factors personal to you that may warrant discounts.

Pre-sentence report

[15] I have a pre-sentence report dated 18 October 2024. There it tells me that you had no discrepancies with the summary of facts, as it was read to you, and you were able to articulate the facts as outlined. There you acknowledged that you overstepped the boundaries as a teacher with his student. You state that you were willing to participate in the restorative justice process should the victims and their families be willing. I understand that was something that did not take place, but you are willing in the future should that be offered.

[16] The information in the pre-sentence report also tells me about your background, your family members, and some of the impacts that this offending has had on them. There I am aware that your father and sister no longer speak to you. I am aware, from the information, that your wife's family also reportedly hate you but continue to support your wife and your children. In terms of the recommendation within that report, the recommendation is for home detention, with post detention conditions.

Submissions

[17] I have had helpful submissions also from your lawyer, Mr Waugh, and also from the Crown. Their items, or aspects, of mitigation have been identified and commented on. Attached to Mr Waugh's submissions are affidavits from yourself and your wife. In terms of your affidavit, you expand on the remorse that you show within the pre-sentence report. There in your affidavit you state the following:

> There is not a day goes by that I do not regret my offending. I have destroyed people. As my own daughter grows up I gain further insight into the harm and suffering I have caused. I have read the victim impact statements and am so sorry for what I have done. I have offered to attend restorative justice to at least make sure that both [victim 1] and [victim 2] understand my genuine remorse. I am aware of how damaging what I have done is to girls at such a vulnerable age and how it can change the trajectory of both of their lives. I reflect on how I would feel if this happened to my daughter at school and it makes me feel sick. I sincerely apologise to both [victim 1] and [victim 2] for what I have done and I also apologise to their families and the community that entrusted me, as a teacher, to care for them and guide them. I failed and utterly breached this trust and will continue to try to repay this debt to the community for the rest of my life. I respect [victim 1] and [victim 2] and their family's decision to not want to meet with me at this time but if they are ever willing I will attend a restorative justice conference.

[18] There, as I said, that aspect of your affidavit goes hand-in-hand with the information within the pre-sentence report where you express your remorse.

Personal mitigating factors

Previous good character

[19] In terms of personal mitigating factors, your previous good character has been raised. Part of it being raised is on the basis that you have no previous convictions for any offending and prior to this offending, it would seem, lived an offence-free life.

There the law tells me that when people are convicted for offending, where they have not offended before, the Court may apply a discount to acknowledge such. Part of that is to acknowledge the fall from grace for someone who has led an offence-free life.

[20] The other aspect though in relation to this offending, that I need to take into account, is the time over which the offending occurred. That, to an extent, balances out your previous good character. Here however, in relation to previous good character, I would afford you five per cent, or one and a half months.

Remorse

[21] In relation to your remorse, as I set out, both in your affidavit and in the pre-sentence report, I determine that to be genuine. You have reflected, now you have pleaded guilty and acknowledged your offending, on the significant harm that you have caused. You have related the words of the victims to how you would feel as a father, given you have a daughter. There, in terms of your genuine remorse and your prospects of rehabilitation, given you have self-referred to counselling to make sure this does not happen again, I would afford you five per cent, or one and a half months.

Guilty plea

[22] That then brings me to your guilty plea. There, at sentence indication I informed you that you would be afforded the full 25 per cent, or eight months.

Sentence

[23] With those calculations that gets me to 21 months' imprisonment. That is a short term of imprisonment. Whether it is to be commuted to home detention involves the exercise of my discretion in a way that gives effect to the purposes and principles of sentencing.

[24] Section 7 includes deterrence, denunciation, accountability, promoting a sense of responsibility in you. All those factors are significantly relevant in any sentencing, certainly this. There is a need to provide for the interests of the victims, protection of the community, and your rehabilitation.

[25] In addition I note s 8(g) requires me to impose the least restrictive outcome that is appropriate in the circumstances. I also take into account s 16 of the Sentencing Act 2002. There it informs me that when considering the imposition of a sentence of imprisonment for any particular offence I must have regard to the desirability of keeping offenders in the community as far as that is practicable and consonant with the safety of the community. It goes on to tell me that I must not impose a sentence of imprisonment unless I am satisfied that the sentence has been imposed for all or any of the purposes set out in s 7, and those purposes cannot be achieved by a sentence other than imprisonment, and no other sentence would be consistent with the application of the principles in s 8 of the particular case.

[26] Your offending is serious. I acknowledge the impact this offending has had on your victims. I note too the collateral damage that has been left in the wake of your offending, namely, your children, wife, the school community, and the family of your victims. Your children and wife have been dragged into this and unfairly are tarred with the same brush that tars you. They now unfortunately carry the same burden and shame you do simply by association.

[27] I balance that with the fact that you have pleaded guilty. You have expressed remorse, both verbally, and also the offered to attend restorative justice. You have apologised to your victims for the pain that you have inflicted. I note from the information that you self-referred to counselling and sought assistance. There I note you are willing to engage with WellStop and do whatever it takes to make sure that you are a better person. Here I determine, by a slim margin, the purposes of sentencing and the principles of sentencing can be achieved by a sentence of home detention.

[28] The sentence I impose on you is one of 10 and a half months' home detention. The conditions of your detention are those set out in the pre-sentence report. I also impose six months post detention conditions. Again, those conditions are set out in the pre-sentence report.

Child Sex Offender Register

[29] That then brings me to the issue of registration. In terms of registration on the Child Sex Offender Register, registration is discretionary given the sentence is less

than imprisonment. In that regard a registration order can be made only if I am satisfied that you pose a risk to the lives or sexual safety of one or more children, or children in general. There I note the definition of child, being a person under 16. Here of course again the offending is serious, given its type and breach of trust, but that cannot be looked at in isolation. Here it becomes a risk assessment. I note you are assessed as a low risk of re-offending, though that increases based on the nature of these charges. Here that needs to be balanced by the fact that the offending was some 11 years ago, given the dates in the Crown charge notice.

[30] I note also the support that you have from your family and those close to you, your referral for counselling, your willingness to engage in WellStop and your remorse, all of which are protective factors and balance risk. Here I am not satisfied the required risk is present and therefore I determine registration will not be ordered.

Name suppression

[31] That then brings me to name suppression. You make an application for permanent name suppression. The application is made pursuant to s 200(2)(a) and (e) of the Criminal Procedure Act 2011.

[32] I have the views of both victims before me. Both oppose name suppression being granted and I acknowledge their views. You submit that if your name is published it would likely cause extreme hardship to persons connected to you, namely, your wife and two children.

[33] The starting point in name suppression applications is a presumption in favour of open reporting of court proceedings, however, the Act permits name suppression where publication would be likely to cause extreme hardship to the person convicted of an offence, or any person connected with that person.

[34] Section 200 of the Criminal Procedure Act contemplates a two-stage analysis. At the first stage I must consider whether I am satisfied that any of the threshold grounds listed in s 200(2) has been established, that is to say, where the publication would be likely to lead to one of the outcomes listed in subs (2). The listed outcomes are pre-requisites to a court having jurisdiction to suppress the name of a defendant.

It is only if one of those threshold grounds have been established that I am able to go on to the second stage.

[35] At the second stage the Judge weighs the competing interests of the applicant and the public, taking into account such matters as whether the applicant has been convicted, the seriousness of the offending, the views of the victims and the public interest in knowing the character of the offender.

[36] Extreme hardship, under s 200, requires a very high level of hardship connoting severe suffering or privation and requiring a comparison between the hardship contended by you and the consequences normally associated with publication. In addition, the defendant cannot simply point to the possibility that a s 200 consequence might occur. The Court must be satisfied that the consequence is likely.

[37] I move on therefore to consider the basis for suppression of the defendant's name, namely that it could lead to extreme hardship of himself but more importantly, his wife and children. As I have said I have affidavits filed in support of the application from both you and your wife. You and your family have experienced abuse and harassment as a result of this offending being known by some in the community. Community knowledge in and of itself does not make an application of name suppression irrelevant. Name suppression can still have a protective feature when likely hardship caused will continue to be extreme or become worse with wider knowledge.

[38] I note from the affidavits that the family, including the children, have been subjected to the following: stones being thrown at them while in Virginia Park, bottles and rubbish being thrown at them, abuse shouted at them from people standing outside their home, stones thrown through their windows, their home being egged, bricks thrown through their car windows, cars doing burnouts on their lawn, mail being stolen, children being harassed at school, animal body parts left on their property and in their mailbox, including the legs of cows and other animals, jackets left outside on coat hooks in their house being slashed with knives. Most of the above the defendant's children and wife have been exposed to. Those who have done those acts need to take

a hard look at themselves. It is simply creating further victims, the children, that have been exposed to that behaviour. They are innocent by-products of the defendant's offending, they are not responsible for his actions, nor should they wear it.

[39] The defendant's wife, from the affidavits before me, is suffering from chronic anxiety, insomnia and depression. She clearly has a significant concern for her children. She is worried for her future and ability to maintain her employment. She will be the main earner for her family and should she lose her job then that will impact her children.

[40] The defendant's son, who is now [a teenager], has been the target of some of the above behaviour and has developed a tic. The defendant's daughter, who is [two years younger], has anxiety and is frightened to be in public. The impact of further bullying and extreme retribution through online attacks may be extremely detrimental to the children at their young and vulnerable age.

[41] As I said earlier, it does not get lost on me that their ages are similar to those of the victims of the defendant's offending. Here, there is clear evidence that the defendant's wife and children will suffer a level of hardship or privation that is likely to be over and above that normally associated with offending. That behaviour has already started. What has already transpired within the confines of suppression has exposed those connected to the defendant to hardship which must be assessed as extreme. It is likely, or the potential is there, that publication will fuel or ventilate that. Suppression may control some of those behaviours that have already been exhibited and where possible protect the children and the defendant's wife. Here, as I said, there is a hardship to them and it is likely to be extreme.

[42] I, however, have to exercise my discretion in the second stage, balancing public interest and open justice, and that hardship. It seems to me, from the information, that the schooling environment that the children are in is protective of them. Here I must take into account the seriousness of the defendant's offending. In that regard I take into account his position as a teacher and the significant breach of trust that occurred. I note the longevity of the offending given the period of time over which it occurred.

I also take into account, importantly, the strong views of the victims that had been put before me. There they do not support suppression of name.

[43] Here I know that there is a public interest in knowing the character of the defendant given the position he held. Here I note also that his behaviour went undetected for a long time. There is, I accept, a concern that there may be other victims of your discrete offending. Here, in exercising my discretion, I decline your application for permanent name suppression.

[44] Therefore the sentence that will be imposed is one of 10 and a half months' home detention. There will not be registration on the Child Sex Offender Registration. Your application for permanent name suppression is declined.

Notes of Judge J M Marinovich on Sentencing Indication – 19 July 2024:

> [1] Mr [S], you appear for a sentence indication today in relation to two charges. Those charges are:
>
> (a) meeting a young person following sexual grooming. That carries with it a maximum penalty of seven years' imprisonment.
>
> (b) The second charge, grooming for sexual conduct with a young person, that carries with it a maximum penalty of three years' imprisonment.
>
> **Summary of facts**
>
> [2] The summary of facts that I have before me as agreed for the purpose of this sentence indication is as follows.
>
> [3] Between 2010 and 2015, you were [a teacher] at [school A]. The victims, I am going to refer to them as victims for the purpose of the sentence indication just to make it easier to identify, the victims [complainant 1] and [complainant 2] were students at [school A] at this time. [Complainant 1] was aged between 12 and 17 years old when she attended high school. [Complainant 2] was aged between 13 and 17 when she attended.
>
> **[Complainant 1]**
>
> [4] The circumstances in relation to [complainant 1] are as follows.
>
> [5] [Complainant 1] met you on her first day at [school A] in 2011 when she was aged 12 years old. You taught her for a short period of time in 2013.
>
> [6] In 2011, you began communicating with [complainant 1] via text message. Between 2011 and 2015, you would also talk to [complainant 1]

when you saw her at school. You would often excuse [complainant 1] from class in order for you and her to spend time together and you would compliment her on her appearance and her intelligence.

[7] In 2012, when [complainant 1] was 13 years old, you persuaded her to go [activity deleted] with you one morning before school. This was not part of an organised school activity. Later that year for her birthday, you invited [complainant 1] into your classroom alone and gave her a gift. The gift was a photograph of people [activity deleted], however, you had photoshopped [complainant 1]'s face onto the photo.

[8] In 2013, you persuaded [complainant 1] to go on another [activity deleted] trip with you, this time to [a nearby city]. Again, this was not an organised school activity. Shortly after this trip, you and [complainant 1] stopped communicating regularly, though your communication commenced again in 2014.

[9] In 2015, when [complainant 1] was 17 years old and in her final year at [school A], you and her began to have sexual intercourse regularly. You also sent her notes telling her you loved her and asked her to run away with you. Your sexual relationship continued with [complainant 1] on her leaving school.

[Complainant 2]

[10] In relation to [complainant 2], [complainant 2] started [school A] in 2010 when she was aged 13 years old. [Complainant 2] met you in 2012 when she was in your [class]. During this year, [complainant 2] started spending her lunch breaks with you in your classroom. You would give [complainant 2] lollies and told her to use the excuse of needing stationery so she could go to you to get lollies.

[11] You would often excuse [complainant 2] from her classes in order to spend time together. You and [complainant 2] would watch videos on your computer. You bought [complainant 2] gifts, would take her out to buy food, and would compliment her on her looks, telling her she was pretty. [Complainant 2] turned 16 years at the beginning of 2013, at which point you began communicating with her via text message and Facebook Messenger. You also began spending more time together.

[12] So those are the agreed facts for the purpose of this indication.

Submissions

[13] I have had written submissions from both your lawyer, Mr Waugh, and also the Crown. Both have provided cases in order to assist me in determining the appropriate start point for your offending. Both agree that the start point is imprisonment, the issue is for how long. The Crown submit that a start point for the offending on [complainant 1] is two years' imprisonment with an uplift of six months for the offending on [complainant 2]. Mr Waugh submits an overall start point of 12 months' imprisonment is appropriate.

Cases

[14] In terms of cases, there is no tariff or guideline judgement from our Court of Appeal dealing with offending of this type. That is for the very good reason that such offending can occur in an infinite variety of ways.

[15] I am referred by the Crown to the United Kingdom sentencing guidelines referred to in a case called *Davidson* in respect of their equivalent legislation in the United Kingdom.[1] In *Davidson*, the Court of Appeal stated:

> Until a New Zealand guideline under the Sentencing Council Act 2007 comes into force, the UK Definitive Guideline provides a useful reference point (with appropriate adjustment for the lower maximum penalty provided for in relation to s 131B).

[15] As I said, counsel have referred me to a number of cases, those cases being *R v S*, *Bird v Police*, *F v R*, and *R v Walsh*.[2]

[17] In terms of those cases:

(a) *R v S* involved one victim. There was no sexual contact. Contact between the offender and the victim occurred over a short duration of months and the breach of trust was significantly less than present in the case before me. A start point of 12 months' imprisonment was upheld.

(b) *Bird v Police* involved one victim and the breach of trust I determine to be less significant than in the case before me. The physical acts on a relative scale were minor involving touching of the stomach on two occasions and a kiss. The sexual grooming charge was taken as the lead charge and a start point of two years' imprisonment was upheld.

(c) *F v R* involved one victim. The breach of trust, albeit significant, was not to the extent that is present in the matter before me. The sexual contact involved was limited to one open mouth kiss. A start point of two years was adopted on the grooming charge.

(d) In the case of *R v Walsh*, a significant amount of text messages were sent by the offender to a fictitious girl over the internet. The girl was in fact an undercover police officer. The offender was arrested when he travelled to meet her. Obviously, there was no victim or impact on a victim. There, a start point of 12 months' imprisonment was adopted.

[18] I also have regard to the case of *R v Brunie*.[3] The appellant was a youth worker at a secure care and protection facility run by Child, Youth and Family. The offender was employed at that facility. The victim was a resident at the facility and aged 15 at the time of the offending. The appellant was

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[1] *R v Davidson* [2008] CA319/2008 NZCA 484 at [24].
[2] *R v S* [2009] NZCA 64, *Bird v Police* [2017] NZHC 1296, *F v R* [2022] NZHC 747; *R v Walsh* [2016] NZDC 17507.
[3] *R v Brunie* [2009] NZCA 300.

convicted at trial on two counts of sexual connection with a person under 16 and one count of meeting with a person under 16 following grooming.

[19] While in the facility, the appellant became aware the victim had a cellphone. Rather than removing it, he got her number and started texting. The messages became sexually explicit and ultimately led to oral sex which formed the basis of the sexual connection charges.

[20] After the victim was released from the facility, contact continued. The appellant made arrangements for the victim to write to him and send letters to a friend's address to avoid detection and provide her with top ups for her cellphone. The grooming charge reflected what happened over that period up until they had sexual intercourse.

[21] The sentencing judge adopted a start point of eight and a half years' imprisonment comprised of four years for the sexual connection offending and an uplift of four and a half years for the grooming. The primary issue on appeal was whether the four and a half uplift was manifestly excessive.

[22] The Court noted at paragraph [12] the following:

> We consider the aggravating features identified by the Judge in this case warranted a significant uplift on the four year point. This offending involved a high level of premeditation. The breach of trust arising from the appellant's predations on this particularly vulnerable young woman required a stern response in terms of both denunciation and deterrence. As Judge Crosbie said, the criminalisation is intended to provide protection for young girls from predatory behaviour.

[23] A submission in that appeal was made that the grooming was only minimally aggravating of the sexual offending. The Court of Appeal said this at paragraph [15]:

> We disagree. The appellant's communications over the relevant period were sexually explicit. They were designed to make A feel special because of his interest in her. The overall approach was designed to make A receptive to a further meeting and to the sexual activity that ultimately took place.

[24] The Court of Appeal ultimately allowed the appeal and adjusted the start point sentence to one of seven years but determined a concurrent sentence of four years' imprisonment for the grooming charge was appropriate.

[25] I accept the case of *Brunie* has aspects that are more serious than your case. The victim was particularly vulnerable in that she had been foster care and then placed in the care facility. She had no choice but to be there. The breach of trust was significant also given the appellant was employed at the facility, but in some respects, not too dissimilar to your position, both employed to care and protect and be influential on young people, both holding positions of power with respect to people in their charge. Of course, in your case, I am dealing with two victims, albeit I accept in relation to two different charges.

[26] In terms of aggravating factors, I determine the following aggravating factors to be present:

(a) Firstly, the impact on the victims. I have statements from both [complainant 1] and [complainant 2]. It is fair to say the impact has been significant for both. Your conduct impacted on their schooling, their social lives, relationships, and their experiences through adolescence.

(b) A second factor is the scale of offending. This is present in terms of the length of time over which you groomed [complainant 1] and the fact there are two victims. Your conduct with [complainant 1], it would seem, spanned her entire time at secondary school from the age of 12 to 17 and continued once she left.

(c) A third factor is the vulnerability of the victims. Both young women were at an impressionable and somewhat emotionally vulnerable stage of their lives when exposed to you. The legislation that has caught you is there to protect young girls from predatory behaviour.

The victims' vulnerability, however, is linked into the power imbalance that is present between adult/teacher, and young person/student. Their vulnerability increases as the grooming progresses as they emotionally attach themselves to you. This ultimately gives you control. I note in relation to [complainant 1] you told her you loved her and wanted to run away with her. Their vulnerability meant emotionally they were not mature enough to resist your seduction of them.

(d) Fourth, your grooming of [complainant 1] was ultimately successful. It ultimately led to a sexual relationship that commenced while she was still a student, and you were a teacher. I accept she was at an age whereby it was not an offence, however, what it does show is that your persistent and calculated grooming achieved the outcome you ultimately wanted.

(e) Fifth is the gross breach of trust. You were a teacher, and they were students. You were entrusted by your school and their parents to teach, to help, and to grow young people. The victims' parents placed their children in your school for that to occur, not for you to use it as a ground for you to prey and groom.

(f) A sixth factor is premeditation. You persistently worked on each victim, obtaining cell phone numbers, communicating, removing from class to spend time, complimenting the victims on their looks, providing gifts, and isolating them. I note from the summary of facts in relation to [complainant 2] your communication with her increased, as did the time you spent with her when she turned 16.

Sentencing purposes and principles

[27] In terms of sentencing purposes and principles, I take those into account. Clearly, there is a strong need for denunciation and deterrence in this case.

Start point

[28] For your offending on [complainant 1], I adopt a start point of two years' imprisonment. It was persistent, premeditated, and involved a gross breach of trust. It led on to a sexual relationship and has had a significant impact on her life and therefore warrants such a stern approach.

[29] For your offending on [complainant 2], that on its own, given the gross breach of trust and impact on her, could warrant a start point of 12 months easily. However, taking into account totality, I would uplift by eight months' imprisonment.

[30] Therefore, the overall start point would be one of 32 months imprisonment.

Guilty plea

[31] In terms of guilty pleas, should that be forthcoming, I would afford you the full 25 per cent or eight months.

Sentence Indication

[32] That gets me to 24 months' imprisonment.

[33] I accept there may be other personal mitigating factors that could result in further reduction. That of course would depend on the information provided at sentencing.

[34] Given the sentence would be two years' imprisonment or less, I would call for appendices to consider home detention. That would be for sentencing. All right. So, Mr [S], that is the sentence indication that I give.

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Judge J M Marinovich
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 04/11/2024