NAME SUPPRESSION ORDER

IN THE COURT OF APPEAL OF NEW ZEALAND CA.40/87

LR 201

NOT RECOMMENDED

THE QUEEN

V

T

Coram McMullin J (presiding)
Somers J
Casey J

Hearing 27 April 1987

Counsel W.R. Flaus and Miss Annsley Kerr for Solicitor-General
K. Ryan for respondent

Judgment 8 May 1987

JUDGMENT OF THE COURT DELIVERED BY McMULLIN J

This is an application by the Solicitor-General for leave to appeal against a sentence of 18 months imprisonment imposed on the respondent, aged 39 years, on three charges of incest committed on his daughter. He pleaded guilty to these charges in the District Court at the first opportunity.

The first charge relates to an incident in January 1982 when the complainant was 13 years of age. The respondent then shut the complainant in his bedroom and had sexual intercourse with her there. The second charge relates to a similar occurrence in March 1982 and the third to one in January 1985. On each occasion the respondent apologised to

the complainant for his actions but told her not to tell anyone what had happened. When interviewed by the police the respondent admitted the three offences, said that he had a drinking problem but admitted that he knew that what he was doing was wrong.

According to a report from the Probation Officer the respondent had received only the most elementary education but he was regarded as an excellent worker. He has had a drinking problem since he arrived in this country from Samoa in January 1966 but gave up drinking soon after his arrest.

The probation officer commented in his pre-sentence report on the apparent willingness of the family to keep the respondent within the family home. He said:

> She initially presented a two page letter virtually a plea in mitigation and a folder relating to her father's achievements. She was subsequently interviewed. She is concerned about the consequences of this trauma for the family ...

Mr Ryan said that the complainant, who is now a university student, had written a letter to him which he passed on to the sentencing Judge. In this the complainant asked that the respondent be not sent to prison. The Judge referred to the family's attitude in his remarks on sentence but said that he had no option but to send the respondent to prison.

Mr Ryan accepted that the respondent had to receive a

custodial sentence but submitted that the Judge was entitled to impose a lighter sentence than was normal for this class of case because of the respondent's plea of guilty, his family's attitude and his good work record.

It is apparent from the remarks which he made on sentence that the Judge did take these factors into account in the respondent's favour. But even allowing for the early plea of guilty, the respondent's good work record, and the family support, we think that the sentence of 18 months imprisonment was clearly inadequate. It ought by comparison to such cases as R v. Berrington CA.308/85, judgment 11 April 1986 and the other cases cited in the judgment of this Court delivered today in R v. T CA.60/87, 61/87 to have been one of not less than three years imprisonment.

The Solicitor-General's application for leave to appeal is granted, the appeal is allowed and a sentence of three years imprisonment is substituted for the sentence of 18 months imprisonment imposed in the High Court.

The suppression of the respondent's name and of the complainant is covered by s.139(1) of the Criminal Justice Act 1985.

Solicitors

Crown Law Office, Wellington for Solicitor-General
Ryan & Deane, Auckland, for respondent