IN THE COURT OF APPEAL OF NEW ZEALAND C.A. 402/88

THE QUEEN

v.

TUNUI ARANGI TAUTAHI

Coram:	Richardson J Somers J Casey J
Hearing:	20 March 1989
Counsel:	R B Squire for Crown R G Quilliam for Appellant
Judgment:	20 March 1989

JUDGMENT OF THE COURT DELIVERED BY CASEY J

This is an application for leave to appeal by Tunuiarangi Tautahi who was sentenced to 8 years' imprisonment in respect of two charges of indecent assault on a girl under the age of 12 years and two charges of permitting a girl under the age of 12 years to do an indecent act. The sentences were concurrent.

The applicant was 56. He was respected as a Kaumatua or elder among his people and was living with a family who trusted him with their children. Over a period in 1988 he committed gross indecencies on their 10 year old daughter and the present charges relate to that course of conduct.

He suffered severe injuries in an assault in 1975 which the Judge said had destroyed an otherwise worthwhile and good life. However, in May 1986 he had been sentenced to 15 months' imprisonment for attempted sexual intercourse of a girl under 12. After his plea of guilty to the present series of offences the Judge obtained a psychiatric report from Dr Sarfati of Wellington. He was specifically asked to consider the application of s.75 of the Criminal Justice Act relating to the sentence of preventive detention. At p.3 of his report the psychiatrist said :

> "Sect 75 could apply to this offender as an alternative to a lengthy sentence. I am not satisfied that he would respond to treatment because of his lack of insight, his lack of remorse, his lack of response to the various sanctions of the Court and his physical disability. One must concede that the accident in 1975 which led to some brain damage must be considered a factor as it would lower his inhibitions. However this is not of sufficient moment to absolve him from his crimes so that he must bear responsibility for his actions.
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> I doubt that he would be a good candidate for treatment but nevertheless it should be offered to him. A lengthy period of imprisonment has evidently been considered. Although it would be humane to recommend a finite sentence I am not entirely satisfied that after his discharge he would necessarily change his ways. I therefore believe that preventive detention should be considered and it would be up to the Parole Board to determine his release (see Sect 77). He does not suffer from any obvious treatable psychiatric condition, is not legally insane and was fit to plead."

In the light of the applicant's previous offences and these conclusions, shared by the probation officer, the Judge decided his concern was not so much to punish him as to protect young children. He considered a period of

preventive detention and - perhaps fortunately for the applicant - he felt he could deal with it as a finite sentence.

Mr Quilliam said all that he could in support of this appeal. His point that no account was taken of the early plea of guilty has no relevance in a situation in which the sole sentencing consideration was the protection of the public.

Mr Quilliam also criticised some aspects of Dr Sarfati's report. Even if his views were correct they do not affect its overall impact. The Judge was fully entitled to rely on it and there was no other relevant specialist evidence. We consider that the sentences of 8 years in these circumstances cannot be criticised and the application for leave to appeal must be dismissed.

McCasey J

Solicitors: Crown Law Office, Wellington
Quilliam & Co., Napier, for Appellant