

IN THE COURT OF APPEAL OF NEW ZEALAND

CA 5/96

ORDER PROHIBITING  
PUBLICATION OF NAME,  
ADDRESS OR PARTICULARS  
IDENTIFYING APPELLANT.

Holl

THE QUEEN

v.

McL (CA 5/96)

96/1639

held off  
572.7

B67-2 lost para.

Coram: Eichelbaum CJ  
Thomas J  
Tompkins J

Hearing: 22 July 1996

Counsel: D L Bates for Appellant  
P J Hamlin for Crown

Judgment: 14 November 1996

plus 18/157

chc 3x C6 C62  
C2

JUDGMENT OF THE COURT DELIVERED BY THOMAS J

6, 30  
32, 34

The appellant pleaded guilty to two charges of incest, four charges of indecent assault on a girl under 12, five charges of doing an indecent act on a girl under 12, three charges of inducing a girl under 12 to perform an indecent act upon him, one charge of unlawful sexual intercourse on a girl under 12, one charge of attempted unlawful sexual intercourse on a girl under 12, and one charge of attempted rape on a girl under 12.

The charges were representative charges relating to offending which occurred between 1955 and 1979. The appellant's four daughters and two granddaughters were the victims. The sentencing Judge took the view that this catalogue of offending was the worst he had seen in his practice in the field of criminal law over a period of 36 years. He sentenced the appellant to a total of 18 years' imprisonment. The appellant claims that this sentence is manifestly excessive.

#### The sordid facts

The first complainant is now 43 years of age. She stated that her father sexually abused her from as early as she could remember and that he continued to do so until she was 16 years of age. She recalled that each time her mother went to church, which was approximately three times a week, her father would come into her room, carry her into the lounge and abuse her. He would perform oral sex on her, force her to masturbate him and would digitally penetrate her vagina. For a period of time the appellant regularly attempted to have sexual intercourse with the young girl. Up until she was approximately seven years old, however, he was unable to complete penetration because of the pain and the fact that she made too much noise. But from the time she turned seven the appellant had full sexual intercourse with his daughter at least once a week. She became pregnant at 15. The abuse continued after the birth of the child and did not cease until she left home at 16 or 17 years of age.

The second complainant is now 44 years of age. Her earliest recollection of abuse was when she was five years old. She had just started school. At times the appellant would go straight to her bed. On other nights he would abuse one of his other daughters first. She would hear her sister crying. He would then come to her bed. Her father would touch her between the legs, rub her vagina, rub his penis across her face and insert his penis in her mouth. She became terrified of going to

bed. The abuse happened on countless occasions. Her mother could not understand why she would not stay in bed and would tie her to the bed in order to make her stay there. The daughter recalled having to lock the bathroom door while having a bath so as to prevent her father from entering the bathroom. This abuse continued until the complainant was eight years old. At that time her father took her into their garage and removed her pants. He then removed his own pants. She screamed at him to leave her alone. She said that she was "going to tell on him". Following this threat he desisted other than surreptitiously touching her breasts or bottom on odd occasions.

The third complainant is now 35 years of age. She recalls that her father sexually abused her from as far back as she can remember. The abuse consisted of the same acts of degradation as in the case of her sisters. The appellant would force oral sex on her and require her to masturbate him. He would then insert his finger into her vagina before lying on top of her in an attempt to penetrate her vagina with his penis. When he could not get his penis into her vagina he would force it between her legs and her bottom and would simulate sexual intercourse. She would lie completely stiff with her ankles locked together seeking to resist what was happening. This abuse occurred once and sometimes twice a week and lasted until the daughter was approximately 11 years old. She believes it ceased due to the fact that she began sleeping in the top bed of a set of bunks. When she was 14, however, the appellant grabbed her from behind while she was setting the table. She pushed her father up against the refrigerator and held a carving knife against his throat. She told him if he ever came near her again she would slit him from ear to ear.

A fourth daughter did not wish to lay a formal complaint. When spoken to by the Police, however, the appellant admitted having sexual intercourse with her, but only

when she was 15 years of age. He pleaded guilty to a charge of incest in respect of this incident.

The next complainant is one of the appellant's granddaughters. She is now 21 years of age. She provided the Police with details of two incidents in which she was sexually abused by the appellant when she was approximately five years old. On one occasion her grandfather entered her bed, she believes with no clothes on, and simulated sexual intercourse. On that and another occasion he tried to force his penis into her vagina.

The final complainant is also the appellant's granddaughter. She also revealed two incidents of sexual abuse which occurred when she was aged between six and seven years. On one occasion the appellant rubbed her vagina and genital area and forced her to touch his penis. On the other occasion she was taken with two of her sisters to the beach where the appellant again fondled her vagina and genital area.

#### The background reports

The Victim Impact Statements completed by the complainants disclose that they have each suffered extreme and life-long trauma as a result of the abuse. The first complainant is described as one of the most severe cases of sexual abuse aftermath encountered by her counsellor. She suffers flashback memory episodes, disturbed sleep, intrusive thoughts, poor concentration, sexual difficulties, difficulties within relationships, hypervigilance, poor self-esteem and severe dissociative episodes. She also has an eating disorder, anorexia. She is often depressed, has suicidal ideation and has attempted suicide in the past. The long term prognosis for her is not good, the severity of the sexual abuse having "spilled over" into her adult life and into her relationships.

The second complainant has also suffered considerable anguish throughout her life. She reports that the intense terror which she suffered as a child caused her to soil her pants. When she was ten years old she ran away from home 15 or 16 times and believes that she is lucky to be alive. When she was 12 years old, she attempted to commit suicide. In her early teens she was so terrified of her father that she would lie on her stomach as flat as possible and hang on to the bed hoping that he would not come into her room. She had "tried to become invisible". She now has intense feelings of insecurity, no self-worth, and describes herself as being "just an emotional jungle gym". After 19 years of marriage she has found it difficult undressing in front of her husband and reports that the adverse effects of the abuse have placed a real strain on her marriage. She states: "If you could put a price on life; that's what it is... I've lost my life".

The third complainant states that she used to scratch herself until she bled because of being forced to change her clothing in front of her father. She was completely traumatised whenever she had to undress in front of him. She believes the failure of her marriage has had a lot to do with what happened to her as a child. Her father, she says, tore the whole family apart emotionally and physically.

One of the grandchildren still feels extreme guilt, although knowing that she is not the guilty party. She feels resentful and believes that her grandfather has damaged her relationship with her partner and ruined her life. Apart from the symptoms usually associated with sexual abuse, the other grandchild has the additional mortification of having gone to the Police when she was 14 years old and reported the abuse, but no action was taken. In addition, her mother told her she thinks that her grandfather was her natural father.

The various Emotional Harm Reparation Reports also make disturbing reading. They spell out the devastating effect of the abuse on the relationships between all

the children and their parents. One daughter is reported as saying: "My father destroyed his family, he took away our whole sense of family. He damaged all the family members even down to our children and no penalty can replace what he has done".

The Pre-sentence Report states that alcohol misuse may be currently a problem and may have been a contributing factor to the appellant's offending. Nevertheless, the Probation Officer observed that the appellant appeared to completely ignore the stress which he had caused his victims.

#### The sentencing

Appalled at the grave nature of the offending and the effect which it had on the victims, the sentencing Judge described his task as being the imposition of a sentence which would reflect the total abhorrence society has for such offending. The Judge noted that the appellant was 70 years of age and that the offending had ceased some 15 years before. He referred to the health problems suffered by the appellant but considered that these problems could be attended to in prison. The Judge imposed various concurrent sentences on all the offences, save the one of attempted rape, the longest sentence being 12 years' imprisonment in respect of the sexual abuse of one of the daughters. He then sentenced the appellant to six years' imprisonment in respect of the attempted rape charge, this sentence to be cumulative on the previous concurrent sentences, making a total sentence of 18 years.

#### An appropriate sentence

We agree with the sentencing Judge that a severe prison sentence is required.

In the first place, the offending was of an appalling description. Nothing less than a lengthy term of imprisonment will adequately express the community's outrage and abhorrence at such offending. The appellant callously abused four of his daughters and two granddaughters from the time they were young children. He treated them as his sexual slaves, and was indifferent to the effect which his abuse was having and would yet have upon them. He persisted even when their physical limitations caused considerable pain and distress. He carried out his abuse in the presence of his other children. He still lacks any empathy for his victims and the suffering which they have endured.

Secondly, the impact of the offending upon the lives of the six children was devastating. They lived in an environment of fear and intimidation. Their upbringing was dominated by his sexual demands. They never had what could be remotely described as a normal childhood. He was a cruel parent to his children and a foul grandparent to his grandchildren. But just as their childhood was blighted by the appellant's behaviour so too their adult lives have been irremediably harmed. The effect on their mental and emotional stability and their ability to sustain a relationship has been disastrous. Even with counselling, the effects of the appellant's criminal behaviour will damage their lives indefinitely.

Thirdly, the appellant's offending spanned two generations. He abused four daughters and two granddaughters and in doing so he destroyed not only his immediate family but damaged the fabric of the families which they sought to establish in the course of their own lives.

Finally, the attitude of the victims is not irrelevant. While the reactions of the victims varies, most feel exceptional anger at their father. Although expressing the view that the appellant is in need of psychiatric help, they despise him for what he did to them. As one of his daughters has said, "I cannot believe he has no feelings

or remorse or sadness. It wouldn't worry me if they did hang him... He's had a happy life and sacrificed us to do it." Yet another has said, "I am very bitter because he will never get the justice that he deserves... He has lived his life and is quite happy but he has destroyed the lives of so many people around him."

While in a case such as this a severe sentence is required, however, the point may be reached where a long term of imprisonment is so harsh as to become inhumane. Such a sentence forfeits a sense of proportion and contravenes the established objectives of sentencing in a civilised society.

We consider that a sentence of 18 years (which, having regard to the plea of guilty, necessarily represented a starting point of at least 20 years) was unduly severe bearing in mind that the appellant is 70 years of age and has a background of "chronic ill health". The need to reflect the community's abhorrence at such offending, to recognise the horrific nature of the abuse, to have regard to the traumatic and life-long harm to the victims and their families and, to the extent that it is possible in sentencing, to make some atonement to the victims for their suffering, can be met by imposing a sentence which is severe but not excessive. What could be appropriate for a younger man in good health is not appropriate for a septuagenarian suffering chronic ill-health.

In our view the appropriate sentence in this case, having regard to the appellant's age and ill-health, was 15 years' imprisonment. A term of imprisonment of this order could not be construed as being anything other than an emphatic condemnation of the appellant's reprehensible behaviour. It would fully reflect the community's abhorrence of such offending and properly recognise the appalling nature of the appellant's abuse of his daughters and granddaughters and the impact of the offending on them and their families.



We therefore allow the appeal. We quash the sentence of 18 years and substitute a sentence of 15 years. The term of imprisonment for the charge which attracted the sentence of twelve years is reduced to ten years and is made cumulative on the existing sentence of six years, which can be allowed to stand.

The order prohibiting publication of the appellant's name, which of course was made for the benefit of the victims, is continued.

Solicitors

Crown Solicitor, Auckland for Crown

A handwritten signature in black ink, consisting of a large, stylized initial 'R' with a loop, followed by a horizontal line and a short vertical stroke.