

**PUBLICATION OF NAME OR IDENTIFYING PARTICULARS OF  
COMPLAINANT PROHIBITED BY S139, CRIMINAL JUSTICE ACT 1985**

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**CA188/02**

**THE QUEEN**

v

**MAITLAND JAMES KEMP TE TAURI**

Hearing: 10 July 2003

Coram: Gault P  
Blanchard J  
Tipping J

Appearances: R A Harrison for Appellant  
G C de Graaff for Crown

Judgment: 15 July 2003

---

**JUDGMENT OF THE COURT DELIVERED BY BLANCHARD J**

---

[1] Mr Te Tauri appeals against a sentence of preventive detention imposed in relation to representative counts of indecent assault, doing or inducing indecent acts and sexual violation by unlawful sexual connection. The offending was committed against three young female complainants in the period 1999-2002.

[2] The first complainant was aged approximately three and a half years old when the offending against her commenced. It continued for two – two and a half years between June 1999 and January 2002. The complainant was in day care at an

address in Henderson at which Mr Te Tauri resided. On numerous occasions over this period he committed indecent acts on her including touching her vagina both on the outside and inside of her underwear, kissing and licking her vagina and making her hold his penis. Also, while wearing a condom he would insert his erect penis from the rear between her thighs and simulate intercourse until he ejaculated. On his own admission the touching of the vagina both inside and outside her underwear occurred approximately 20 times each. The other indecencies also occurred frequently. Mr Te Tauri admitted the kissing of the vagina 20 times, licking it 10 times and committing the simulated act of intercourse 20 times. All these figures are necessarily approximate.

[3] The second complainant was aged four when the first acts of indecency occurred. The offending was over a five to eight week period in 2001. Again there was touching of the vagina both inside and outside of underwear, two incidents of kissing the complainant's vagina and one occasion of simulated intercourse.

[4] In the case of the third complainant, the offending began when she was nine and occurred over a 10 month period between December 2000 and October 2001. There was one incident of sexual violation (kissing of vagina) when Mr Te Tauri was visiting the complainant's home one evening after she had gone to bed for the night. On other occasions he rubbed the complainant's vagina over her underwear during visits to the home and at his own address. On some of the occasions he and his wife were babysitting the complainant and her siblings.

[5] When the offending against one complainant came to light and charges were laid and the police were investigating in relation to a second complainant, Mr Te Tauri went to the police and made a full confession in which he implicated himself in relation to the third complainant. He pleaded guilty at the earliest opportunity. He is 48 years of age. He has a substantial list of previous convictions but the only one of present relevance was in 1989 for indecently assaulting a female under the age of 12. For that offending he received a three year term of imprisonment.

[6] A report was prepared for the sentencing Judge by Dr Galpin, a consultant psychiatrist with Regional Forensic Psychiatry Services of the Waitemata District

Health Board. Dr Galpin had available to him a neuropsychological assessment prepared by a registered psychologist employed by Regional Forensic Psychiatry Services. His report is comprehensive. It noted Mr Te Tauri's statement that as a child he had been the recipient of inappropriate sexual advances from family members. He told the psychiatrist that he had a "huge sexual appetite" and a "huge attraction to women of all ages". He stated that he had "lots of fantasies about children" and "having sex with children". The attraction is apparently only to children of the female sex.

[7] When serving the term of imprisonment imposed in 1989 Mr Te Tauri undertook the Kia Marama programme and, according to a report prepared at that time, as a result of the programme he identified potential risk factors in the future and was said to have understood the importance of not being alone with or responsible for young girls. Dr Galpin has reported that Mr Te Tauri's recollection of Kia Marama programme "appeared conflictual". He stated on the one hand that it was a fantastic programme which he completed after 15 months but on the other hand he stated that it was not helpful because he could not "spell or read." Mr Te Tauri indicated to Dr Galpin a feeling that he would be in a better position to benefit from such a programme at the present time. Evidently he has now learnt to read and write. He expressed to Dr Galpin his motivation to recommence treatment.

[8] Mr Harrison, who appeared for Mr Te Tauri, advised the Court that he was instructed that his client's admissions to the police came as a result of his having to face a life-threatening health problem relating to a heart condition. The psychiatrist's report refers to coronary artery bypass grafting surgery shortly after Mr Te Tauri's admission to prison in February 2002.

[9] In relation to the second complainant, the report records Mr Te Tauri's admission that his offending was planned. A similar admission was made in relation to the third complainant. He admitted to using alcohol and marijuana during the period of the various offences.

[10] Dr Galpin commented that Mr Te Tauri's sexual offending appeared to have escalated in terms of both frequency and degree despite completion of the Kia

Marama programme some years previously. He is suffering from a paedophilia disorder. After noting the difficulty of predicting future risk, Dr Galpin gave his opinion that Mr Te Tauri was at significant risk of reoffending should he be released into the community at the present time, although he thought the risk could be diminished if Mr Te Tauri successfully reengaged in an appropriate rehabilitation programme. His age, marital status, victim selection, age of onset of sexual offending and lack of diversity of sexual crimes were said to “mitigate against recidivism.” On the other hand, Dr Galpin said that the Court should note that Mr Te Tauri had stated that his offences were planned. “Clearly, Mr Te Tauri’s prior sexual offence, and in my view, the apparent escalation and degree of offending is a cause for concern”. By his own admission Mr Te Tauri was sexually aroused by children. His inability to complete previous treatment needed to be considered by the Court. Dr Galpin said that he could not, however, be clear that the criteria for a sentence of preventive detention had been met but ultimately this was a legal issue for the Court to decide.

[11] The sentencing occurred on 14 June 2002 and thus shortly before the commencement of the Sentencing Act 2002. The parole regime under the now repealed s75 of the Criminal Justice Act 1985 continues to apply: see s20(2) of the Parole Act 2002 and *R v Oran* CA184/02, 13 February 2003 and *R v Patuwai* CA199/02, 11 March 2003.

[12] The sentencing Judge referred to the stipulation in s75 of the Criminal Justice Act that preventive detention should be imposed only if it is expedient for the protection of the public that the offender be detained in custody for a substantial period. He also recognised that he was obliged also to consider whether a finite sentence, one perhaps longer than might be strictly merited by the facts of the particular charges, was a more appropriate sentence to impose: *R v Leitch* [1998] 1 NZLR 420, 429.

[13] The Judge referred to the fact that Mr Te Tauri had previously undergone the Kia Marama programme and had reoffended about seven years after his release from the three year term of imprisonment. He reviewed the psychiatric report, noting from it and from submissions made on Mr Te Tauri’s behalf and from his actions in

confessing everything to the police, that Mr Te Tauri has deep remorse for what he has done. He referred to the psychiatrist's comments concerning the risk posed by Mr Te Tauri should he be released at the present time. He referred also to the psychiatrist's comments concerning likely recidivism and the concern expressed about the apparent escalation in the degree of offending. He said that the victim impact statements made chilling reading.

[14] The matters that influenced the Judge included the previous sexual offending and the fact that Mr Te Tauri had passed through the Kia Marama programme; that some of the offending was very comparable with the actions which gave rise to the 1989 convictions; and the gravity of the offending. There had been a gross breach of trust in relation to the victims. The offending had extended over several years. The charges were representative.

[15] The Judge said that he gave credit to Mr Te Tauri for his efforts made to rehabilitate himself since he was in jail following the 1989 conviction, and for his remorse and the "full and frank confession" made to the police.

[16] In the end, however, the Judge decided that a sentence of preventive detention was the only appropriate sentence which he could impose. In his view, Mr Te Tauri was a risk to young girls who came within his influence and would continue to be a risk to them "for a long time to come". The critical factor, for the Judge, was that Mr Te Tauri had been through what the Judge described as the best programme we have for sexual offenders and yet a few years later the influence from that programme had not dissuaded him from serious, prolonged offending against three young girls in his care.

[17] On Mr Te Tauri's behalf, Mr Harrison suggested that the Judge may not fully have appreciated that in making his confession Mr Te Tauri had gone as far as incriminating himself in respect of a third victim of whom the police were not yet aware. We do not however read the Judge as having been unaware of this aspect. As we have noted, he described the confession as "full and frank".

[18] Mr Harrison also submitted that a sentence of preventive detention necessarily cannot reflect credit for a confession and guilty plea and he referred us to an indication from this Court in *R v Churches* CA316/01, 24 April 2002, that this factor may possibly tip the balance in favour of the imposition of a finite sentence, albeit one of a length intended to give protection to the public.

[19] Mr Harrison pointed to the psychiatrist's observation that the risk posed by Mr Te Tauri could be diminished if he successfully re-engaged in an appropriate rehabilitation programme, saying that the apparent failure of the Kia Marama programme may have been because of the appellant's illiteracy which has now been remedied. Some of the offending was cannabis related. Counsel said that Mr Te Tauri has now stopped using cannabis. It was submitted that any risk he poses would be diminished also by the fact that he has the support of a new partner and of a family which would be aware of his offending history.

[20] We are unpersuaded that the Judge erred in deciding that, in accordance with s75, it was necessary to impose preventive detention for the protection of the public. It seems to us that the Judge was right to conclude that there is a distinct risk of further offending if Mr Te Tauri were to be released on completion of a finite sentence. His prolonged serious offending against three very young girls even after he has been through the Kia Marama programme is of great concern, as is the fact that, despite his willingness to confess what he had done and his remorse, he continues, according to the psychiatrist's report, to be sexually aroused by female children and to have fantasies in relation to them. It is troubling also that the offending involved a degree of planning. He deliberately placed himself in a position which gave him the opportunity of offending against the young girls, notwithstanding having received counselling which specifically urged him not to do so.

[21] The appeal against sentence is accordingly dismissed.