ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS, OCCUPATION AND IDENTIFYING PARTICULARS OF APPELLANT PURSUANT TO S 200 OF THE CRIMINAL PROCEDURE ACT 2011.

NOTE: PUBLICATION OF THE NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011.

IN THE COURT OF APPEAL OF NEW ZEALAND

CA41/2015
[2016] NZCA 272

BETWEEN	H (CA41/2015) Appellant
AND	THE QUEEN Respondent

Hearing:	25 May 2016
Court:	Stevens, Woodhouse and Wylie JJ
Counsel:	S G Vidal for Appellant I R Murray for Respondent
Judgment:	21 June 2016 at 11.30 am

JUDGMENT OF THE COURT

A The appeals against conviction and sentence are dismissed.

B Order prohibiting publication of name, address, occupation or identifying particulars of appellant pursuant to s 200 of the Criminal Procedure Act 2011.

REASONS OF THE COURT

(Given by Woodhouse J)

Introduction

[1] Following a jury trial before Judge Turner in the Invercargill District Court the appellant, Mr H, was found guilty on six charges of sexual offending against a child (C): a representative charge of indecent assault for the period 1 October 2009 to 1 May 2010; a further representative charge of indecent assault for the period 1 May 2010 to 21 November 2010; two charges of indecent assault on specific occasions; a charge of rape; and a charge of sexual violation by unlawful sexual connection.[1] Mr H was found not guilty of a charge of performing an indecent act on C's sister. Mr H was sentenced to 13 years' imprisonment.

[2] Mr H appeals against conviction and sentence. The appeal against conviction is on the grounds that his trial counsel (not Ms Vidal) erred in failing to object to evidence and this resulted in a miscarriage of justice. Mr H appeals against the sentence on the ground that it was manifestly excessive.

Factual background

[3] The offending occurred in 2009 and 2010 when C was aged between seven and a half and eight and a half years. C was living with her mother, two sisters and, for part of the time, her father. Mr H lived with them as a boarder at different addresses between 2007 and 2010.

[4] For a period while he was living with the family, Mr H was having an affair with C's mother. Mr H moved out of the last address in November 2010 after an argument with C's mother.

[5] C alleged that she was sexually abused by Mr H at two houses where they were living, at a house where Mr H was working as a gib stopper, in a public reserve and in his car. Mr H and C's mother also had sex at the house where Mr H was working, at the same place in the reserve, and in his car, as well as at the family home.

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1 *R v [H]* DC Invercargill CRI-2012-025-2339, 18 December 2014.

[6] There were two representative charges of indecent assault between October 2009 and November 2010 because this offending occurred at two different houses where they were living. C said that Mr H would come into her bedroom at night and take her to his bedroom. He would undress her and undress himself and then lie on top of her and rub his penis against her stomach and genital area and simulate sexual intercourse with her. In an evidential video interview, C said that this occurred "more than once" and "all the time, 'cept for on Wednesdays when he goes to pool".

[7] One of the charges of indecent assault on a specific occasion was at the house where Mr H was working. C said that he kissed her and lifted up her top, touched her sexually and simulated sexual intercourse. Mr H and C's mother had also had sex at this house.

[8] The other charge of indecent assault on a specific occasion occurred in a reserve. C said that Mr H tried to have sex with her and his penis was rubbing against her body. Mr H and C's mother had also had sexual intercourse at this location.

[9] The charges of rape and sexual violation by unlawful sexual connection related to the same occasion at the home they were living in at the time. C said that Mr H digitally penetrated her, causing her to bleed, and that he tried to put his penis into her vagina.

[10] C told her mother about the abuse after Mr H had moved out and some time before Christmas 2010. C's younger sister was in the room and told her mother that Mr H had also sexually abused her. She alleged that on one occasion Mr H had come into her room in his underpants and taken her hand and placed it on his penis. This led to the charge of performing an indecent act on C's sister. Police were contacted. There was an evidential video interview of C in January 2011 and of her younger sister in February 2011. Mr H was found not guilty of the charge in respect of C's sister.

[11] In July 2011 C was taken to a doctor because she was complaining of an itchy genital area. She was found to have chlamydia. At around the same time C's mother was diagnosed with chlamydia. There was expert opinion evidence from Dr Patricia Say that "the acquisition of chlamydia in a post neonatal child is diagnostic/highly likely to be from sexual contact". Dr Say said:

> In my opinion the appropriate laboratory testing has confirmed the presence of chlamydial genital infection in this child [C] and it is highly likely that transmission has occurred by infected genital secretions being placed within the labia or vagina through sexual contact.
>
> It is not possible to say how long the child may have been infected or to say from whom it was transmitted.

[12] Dr Say had read a report from a paediatrician who had examined C in August 2011. The paediatrician had found a transsection (healed division) of C's hymen. Given C's medical and other relevant history and the structure of the hymen, the paediatrician's opinion was that the transsection was evidence of "previous blunt force penetrating trauma". He said:

> The potential sources of a penetrating injury are many, and include penetration by a digit or penis.
>
> Such an injury might be associated with pain and bleeding. These features were described by [C] as being present on one occasion.

The defence case

[13] Mr H was twice spoken to by police, in February 2011 and September 2012. He denied the allegations of C and her sister. After the second interview he was asked if he would be tested for chlamydia, but declined.

[14] At trial Mr H gave evidence denying the allegations. He also gave reasonably detailed evidence about his sexual relationship with C's mother, and his relationship with the children.

[15] Mr H gave evidence of his reasons for declining the request to be tested for chlamydia following the interview in September 2012. He gave evidence that a sample had been taken from him in October 2012 and that the result was negative for chlamydia.

[16] Ms W was a sexual partner of Mr H. She gave evidence that she also tested negative for chlamydia in December 2012.

Grounds of appeal

[17] The principal ground of appeal was that there was a miscarriage of justice arising from one or more of a number of errors by Mr H's trial counsel, Mr Young. Mr H's contentions in that regard are in an affidavit, and there is an affidavit in response from Mr Young.

[18] All of Mr H's allegations of counsel error are, in substance, concerned with the admissibility of evidence. Mr H contends:

(a) Mr Young failed to advise him that he could object to the admissibility of the evidence that C had chlamydia and there should have been an objection to the admissibility of that evidence; and

(b) Mr Young should have objected to the admissibility of the following categories of evidence:

(i) the mother's chlamydia;

(ii) two passages in the evidence of Dr Say;

(iii) propensity evidence relating to Mr H's sexual practices with C's mother and with Ms W; and

(iv) evidence led by the Crown from a police officer that Mr H declined a request to be tested for chlamydia, and questions of Mr H in cross-examination in that regard.

[19] A second ground of appeal was that the verdicts were against the weight of evidence. Ms Vidal provided brief written submissions in support of this ground. The submissions were directed to the credibility of C, with a general submission and references to apparent inconsistencies, or other indicators of unreliability, in specific

pieces of evidence from C. There was a further short submission directed to some of the evidence subject to the first ground of appeal. In oral submissions Ms Vidal said that this ground of appeal is, in effect, fully covered by the first ground of appeal alleging miscarriage of justice. We agree. The generalised challenge to C's credibility, and the submissions on specific aspects of C's evidence, do not come close to indicating that there was a verdict against the weight of evidence. This ground does not require further consideration.

Alleged counsel error: the affidavits

[20] Mr H's affidavit refers to a number of matters which are no longer grounds of appeal and can therefore be left to one side. At a general level Mr H expressed no criticism of Mr Young. He said that he was "doing a fine job of fighting my case for me". He also said that he believed "Mr Young did a good job for me and I am not upset at him, I am upset at being convicted of what I did not do".

[21] The only matter coming clearly within the grounds of appeal, or specific submissions of Ms Vidal, is the following statement:

> I do not recall [Mr Young] discussing with me whether the test results for [C] could be challenged at a hearing before the trial or that we could try and have them kept out of the evidence.

[22] Mr Young said that he never told Mr H that the positive chlamydia test result for C could be kept out of evidence. He said that he was sure that it was admissible "due to its very high probative value", which he had explained earlier in his affidavit. Mr Young said that Mr H "certainly knew that evidence could be challenged" because Mr Young had challenged particular items of evidence which he referred to.

[23] Mr Young's evidence of the nature of his professional relationship with Mr H was consistent with that of Mr H. Mr Young set out details of the amount of time spent in discussing the case, including discussions on a range of particular issues. We are satisfied from this evidence, which is not in conflict with anything Mr H said, that Mr Young met all of his fundamental obligations to a client faced with serious criminal charges and which, if not met, are generally likely to give rise to a miscarriage of justice.

[24] In respect of the grounds of appeal, Mr H signed written instructions to Mr Young which include the following:

> I am happy to leave it up to Mr Young to question the witnesses as he sees fit (to leave Mr Young in charge of the finer details of the case).

[25] Those written instructions were the final instructions for trial and covered a range of matters, including fundamental matters for counsel, such as whether Mr H would give evidence. There had been written instructions on a range of matters on two earlier occasions. The conduct of the trial by Mr Young was consistent with the instructions he received.

Alleged counsel error: principles

[26] The starting point is s 385 of the Crimes Act 1961. This prescribes four circumstances in which an appeal against conviction must be allowed by this Court. The only circumstance of relevance is that on any ground a miscarriage of justice has occurred.[2] Thus, as Ms Vidal recognised, if the appeal is directed to error by trial counsel, it will be necessary to establish that there has been a miscarriage of justice.

[27] The principles regarding trial counsel error were set out by the Supreme Court in *R v Sungsuwan.*[3] The Supreme Court's decision was discussed in this Court in *R v Scurrah.*[4] There is a further discussion of the applicable principles following enactment of the Criminal Procedure Act 2011 in *Hall v R.*[5]

[28] As noted in *R v Scurrah*, generally "the focus should be on the trial process and its outcome rather than on the characterisation of counsel's conduct".[6] The general approach was summarised as follows:

> [17] The approach appears to be, then, to ask first whether there was an error on the part of counsel and, if so, whether there is a real risk that it affected the outcome by rendering the verdict unsafe. If the answer to both

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2 Crimes Act 1961, s 385(1)(c).
3 *R v Sungsuwan* [2005] NZSC 57, [2006] 1 NZLR 730.
4 *R v Scurrah* CA159/06, 12 September 2006 at [10]–[20].
5 *Hall v R* [2015] NZCA 403 at [8]–[11].
6 *R v Scurrah*, above n 4, at [13].

> questions is "yes", this will generally be sufficient to establish a miscarriage of justice, so that an appeal will be allowed.
>
> [18] On the other hand, where counsel has made a tactical or other decision which was reasonable in the context of the trial, an appeal will not ordinarily be allowed even though there is a possibility that the decision affected the outcome of the trial. This reflects the reality that trial counsel must make decisions before and during trial, exercising their best judgment in the circumstances as they exist at the time. Simply because, with hindsight, such a decision is seen to have reduced the chance of the accused achieving a favourable outcome does not mean that there has been a miscarriage of justice. Nor will there have been a miscarriage of justice simply because some other decision is thought, with hindsight, to have offered a better prospect of an outcome favourable to the accused than the decision made.
>
> [19] This analysis will be sufficient to deal with most cases.
>
> [20] But there will be rare cases where, although there was no error on the part of counsel (in the sense that what counsel did, or did not, do was objectively reasonable at the time), an appeal will be allowed because there is a real risk that there has been a miscarriage of justice.

Evaluation

C's positive test for chlamydia

[29] Ms Vidal, in her oral submissions, said that the point of emphasis was that there was no advice from Mr Young to Mr H that there could be a challenge to the admissibility of the evidence that C had tested positive for chlamydia.

[30] We are not persuaded that there was any error by Mr Young in this regard. The evidence from the affidavits of Mr H and Mr Young was summarised earlier. Matters of this nature were left to Mr Young. Mr Young was not bound to say to his client that admissibility of this evidence could be challenged. The evidence obviously was central to the Crown case. The evidence was highly probative evidence that C had been raped. But the real issue is whether there was error by Mr Young in failing to challenge the admissibility of this evidence, with that error resulting in a miscarriage of justice. There was no error because there was no reasonably arguable basis for challenging admissibility.

[31] Ms Vidal submitted that it was arguable that admissibility of this evidence could have been challenged on the grounds that it would have an unfairly prejudicial effect. An argument on those grounds had no prospect of succeeding.

[32] The fact that C had chlamydia was not, of itself, probative on the central issue whether she had been sexually abused by Mr H. That issue is quite separate from the issue of whether there had been any abuse at all. The fact that C had chlamydia could have been prejudicial to Mr H, depending on the assessment by the jury of a range of other evidence, but prejudicial effect, as opposed to unfair prejudicial effect, is not a ground for excluding evidence. The evidence that C had chlamydia could have been assessed by the jury as supportive of the defence case. This was because of the evidence from Mr H and his other sexual partner, Ms W, that both had tested negative for chlamydia. Mr Young had made clear to Mr H that these negative tests might also be assessed by the jury as warranting little or no weight because the tests were conducted long after the event and there was evidence of various things that could have eradicated chlamydia if it had earlier been present.

C's mother's positive test for chlamydia

[33] The proposition for Mr H is that the evidence of the mother's positive test for chlamydia was inadmissible because it was irrelevant to the charges against Mr H or, even if it had some probative value, this was minimal and substantially outweighed by the risk of unfair prejudice to Mr H. Ms Vidal submitted that the risk of unfair prejudice arose, in particular, because of the risk of an improper inference being drawn by the jury by reasoning along the following lines: C alleged that she had been sexually abused by Mr H; C had chlamydia; chlamydia in a young child is highly likely to have come from sexual contact; adult women can contract chlamydia from sexual contact; Mr H was in a sexual relationship with C's mother; C's mother had chlamydia; therefore, Mr H must have infected C, either because he contracted chlamydia from C's mother, or because he already had chlamydia and infected both C and C's mother.

[34] Ms Vidal submitted that there was added risk of unfair prejudice from the evidence of the mother's positive test for chlamydia because the test was conducted nine to ten months after the mother's sexual relationship with Mr H had ended, and she acknowledged sexual relationships with her husband and one other man after the relationship with Mr H ended.

[35] There would be a degree of force in Ms Vidal's submissions if the only evidence of consequence against Mr H had been C's direct evidence, the evidence that C had chlamydia (and Dr Say's expert evidence in that regard), and the evidence that C's mother had chlamydia. But there was a body of other evidence which the jury could properly have placed weight on to be satisfied beyond reasonable doubt that Mr H was guilty of the charges he faced in respect of C.

[36] There are three further considerations:

(a) The first is that the evidence of the mother's chlamydia, like that of the C's chlamydia, was a two-edged sword for the Crown. This evidence, when weighed by the jury against the evidence that Mr H and his other sexual partner did not have chlamydia, supported an argument that, if C had been sexually abused, it could not have been by Mr H, or at least there was a reasonable doubt in that regard.

(b) The second consideration is that Judge Turner, in his summing-up, gave a clear direction to the jury on the proper use of this evidence setting out the line of argument for the Crown and then setting out the line of argument for the defence.

(c) The third, and largely determinative, consideration is that the evidence of the mother's positive test for chlamydia was admissible because it did have some probative value and this, in the context of the case as a whole and the directions from the Judge, was not outweighed by the risk of unfair prejudice. As Mr Murray put it for the Crown, the evidence about the mother's chlamydia, subject to the areas of uncertainty we have touched on, was simply one of the factual matters to be put to the jurors to be weighed by them. It was a piece of circumstantial evidence.

The expert opinion of Dr Say

[37] Dr Say received instructions from police to provide expert evidence on the "transmission of chlamydia". Her expertise to provide such evidence is not in issue.

Her evidence-in-chief was given by reading a 14 page brief of evidence. Ms Vidal submitted that there should have been an objection to the admissibility of two short statements from this brief, and that a miscarriage of justice arose because there was no objection.

[38] The first passage was in a section headed "Possible reasons for a negative test". This related to the negative test result for Mr H in October 2012. Dr Say recorded five possible reasons for a negative test result, expressing these in general terms unrelated to any direct evidence in this case, except for the fact that the opinion was prompted by the negative result for Mr H. The reasons advanced are uncontroversial. The submission for Mr H is that the opinion should never have been admitted in evidence because it is "highly speculative [and] extremely unfairly prejudicial".

[39] The Crown was entitled to lead this evidence because part of the defence case was that Mr H could not have been the assailant because he did not have chlamydia. The evidence was not speculative. The thrust of Dr Say's opinion was that the fact that Mr H did not test positive for chlamydia in October 2012 did not mean that he did not have chlamydia in 2010 or earlier. It was not unfairly prejudicial.

[40] The other statement was the following:

> The history provided by the evidential interview could explain how [C] contracted the chlamydia infection because of the history of several episodes of sexual abuse including penile–vaginal penetration.

[41] There were no reasonably arguable grounds for excluding that opinion. It was, as we have already indicated, highly probative on one of the essential issues — whether C had been sexually abused.

Evidence of Mr H's sexual practices with C's mother and with Ms W

[42] The submissions under this heading were directed to propensity evidence. There was evidence that, during the sexual relationship between Mr H and C's mother, Mr H had bought clothing for her use during their sexual activity. There was

evidence from C about clothing she said Mr H had bought and got C to wear on one occasion when he sexually abused her.

[43] There was also evidence from C's mother of locations away from the home where she and Mr H had sex. As noted in the factual background, there was evidence from C that she had been sexually abused at locations away from the home where there had been, according to her mother, sexual relations between the mother and Mr H.

[44] In respect of the clothing, Ms Vidal submitted that the evidence should never have been admitted because there was no similarity. It was submitted that C's evidence was, in essence, that clothing had been given as a reward, but the mother's evidence was to the effect that clothing was put on during sexual activity as part of that sexual activity. Ms Vidal referred, in part, to the summary of the evidence in Judge Turner's judgment admitting the evidence on an application by the Crown.

[45] On our review of the more detailed evidential video evidence from C, we are satisfied that the evidence from the mother was admissible as propensity evidence under s 43 of the Evidence Act 2006. C's evidence was that it was a top that "had little diamonds on it … like a summer top … that was like for bed". She said:

> … he got me out of my bed and then this is the night that he put his finger inside me after he put his um finger inside me, um he he put this black top top on me and then then then then then I don't want to wear it and then then he, then he was touch[ing] me up here (indicates) and then then um then then he he he said '*Do wanna go to bed now*" and I said yes and then then then and then then I took the black top off me and then then I put on my singlet and that on and then I went to bed.

[46] Following that statement C said that the top was like a summer top without sleeves and the diamonds "were like gold and silver". She said that after this incident he put the top "with his clothes and that".

[47] We are satisfied that there was a sufficient link between this evidence and that of C's mother about clothing, for the mother's evidence to be admitted.

[48] We are also satisfied that the evidence from the mother, of locations away from the home where she had engaged in sexual conduct with Mr H, was also admissible as propensity evidence because two of those locations were the same as locations where C said she had been sexually abused. One of those locations — the house where Mr H was doing a gib stopping job — had added significance because it provided some independent evidence supporting C's direct evidence that she had been sexually abused at that house. If the jury accepted C's evidence that she had been sexually abused by someone at that house, it was appropriate for the jury to weigh the likelihood that the person who abused her was someone other than Mr H.

[49] Ms Vidal's submissions under this heading also touched on evidence from Ms W to the essential effect that Mr H had not bought clothing for her when they had a sexual encounter. There was a submission that the Crown went beyond the propensity evidence ruling by seeking to suggest, by questions, a relevant pattern of behaviour in respect of Ms W and another person. Nothing turns on this point. It certainly did not give rise to, or contribute to, a miscarriage of justice.

Evidence that Mr H had declined to undergo a medical examination

[50] Evidence was led from a police officer that, in the second interview of Mr H, he was asked whether he would undergo a test to determine whether he had chlamydia. There was the following exchange:

> Q And again you would accept wouldn't you there was absolutely no requirement for the defendant to agree to this?
>
> A Absolutely, I informed him of that.
>
> Q And did he agree to it at that time?
>
> A No.

[51] In cross-examination Mr H was asked why he was "worried about just saying yes to the chlamydia test". He said, "I don't really trust the police that well myself" and that he wanted to seek his "own legal counsel".

[52] The Crown was entitled to adduce this evidence. Counsel did not go beyond the limits of questioning, on a topic like this, that arise from a defendant's rights to silence and not to incriminate oneself.

Result on the conviction appeal

[53] Given our conclusions on each of the grounds of appeal we are satisfied that no miscarriage of justice occurred. We are also satisfied that if all of the grounds of appeal are assessed in combination, as submitted by Ms Vidal, there has not been a miscarriage of justice.

[54] The appeal against conviction is dismissed.

Sentence appeal

Sentencing

[55] Judge Turner took the rape as the lead offence. He fixed what he described as a starting point of 13 years' imprisonment. Judge Turner had agreed with submissions of both counsel that the offending fell within band 3 of *R v AM (CA27/2009),* indicating a starting point between 12 and 18 years' imprisonment.[7] Ms Vidal submitted that the sentence is manifestly excessive because the starting point was too high.

[56] Judge Turner recorded that both counsel agreed that the aggravating features of the offending were as follows:[8]

(a) there was an "enormous breach of trust";

(b) there was planning and pre-meditation;

(c) it occurred in C's home at times when others were present, often asleep;

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7 *R v AM (CA27/2009)* [2010] NZCA 114, [2010] 2 NZLR 750.
8 *R v [H]*, above n 1, at [12].

(d) Mr H engineered situations where he could take C out in his car without her sister being present;

(e) Mr H took C to the place where he worked and to "the bush";

(f) C was vulnerable because of her age and because of Mr H's role in the household was often akin to a father figure;

(g) there was physical and psychological harm to C. He said: "In many ways you have robbed her of her childhood innocence"; and

(h) the scale of the offending was over a period of one year.

[57] The Judge also referred to grooming and the evidence that on one occasion Mr H said to C "I am going to fuck you when you get older".[9] There also was evidence of what the Judge described as some threats made to C not to tell her mother.

[58] Mr H had a previous conviction for indecent assault nearly 20 years before. The Judge did not impose any increase for that offending, but because of it did not allow any credit for good character. There was no adjustment for any other mitigating factors. The end sentence for rape was, therefore, 13 years. Concurrent sentences of seven years' imprisonment for the sexual violation by unlawful sexual connection, and four years' imprisonment for the four indecent assault offences, were imposed.

[59] Ms Vidal submitted that, were it not for C's age and her relationship with Mr H, the offending would have been at the lower end of *R v AM (CA27/2009)* band 1.[10] Taking account of age (vulnerability), the breach of trust and premeditation, the offending fell within band 2 (a starting point of between seven and 13 years' imprisonment). Ms Vidal submitted that there was no violence in the single offence of rape, or in the single offence of unlawful sexual connection, beyond what is inherent in both offences, and that there was no injury.

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9 At [14].

10 *R v AM (CA27/2009)*, above n 7.

[60] Ms Vidal referred to the facts of three other cases where there was a starting point of 13 years' imprisonment, and submitted that the offending in each of those was significantly more serious than in this case.[11]

[61] The final proposition was that the starting point for the rape should have been at the lower end of band 2, with an increase to nine years' imprisonment to take account of the five other offences.

[62] Ms Vidal acknowledged that there was no justification for any reduction for personal mitigating factors.

Evaluation

[63] It is clear that what the Judge described as a starting point, and implicitly for the lead offence of rape, amounted to an uplifted starting point that took account of all of the offending. That is reasonably clear from the list of aggravating features, some of which did not apply to the rape, and which occurred at the same time as the unlawful sexual connection. It is also apparent from the fact that what was described as a 13 year starting point was not increased for the other offences.

[64] Because the sentence of 13 years was imposed by taking account of all of the offending, we are satisfied that the starting point adopted by the Judge, which was also the end sentence, was well within range. The cases referred to by Ms Vidal do not support a different conclusion. As this Court said in *R v AM (CA27/2009),* band 2, with a range of seven to 13 years, "is appropriate for cases which involve two or three of the factors increasing culpability to a moderate degree".[12] The rape and the unlawful sexual connection, which occurred at the same time, together warranted a starting point at least at the top of band 2, given the range of aggravating factors for those offences, including the injuries inflicted. Ms Vidal was in error to suggest that there was no physical injury from the rape. There was because this young girl was infected with chlamydia. At the same time she suffered the injury to her hymen.

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[11] *S (CA71/2014) v R* [2014] NZCA 478; *Robson v R* [2015] NZCA 609; and *P (CA672/2013) v R* [2015] NZCA 96.

[12] *R v AM (CA27/2009)*, above n 7, at [98].

Then there are all the other aggravating features of these two offences which do not need to be repeated.

[65] We are satisfied that all of this offending comes within band 3 of *R v AM (CA27/2009)*.[13] An uplifted starting point of 13 years' imprisonment was well within range.

[66] The appeal against sentence is dismissed.

Result

[67] The appeals against conviction and sentence are dismissed.

[68] To protect the identity of the complainants, we make an order prohibiting publication of the name, address, occupation or identifying particulars of the appellant pursuant to s 200 of the Criminal Procedure Act.

Solicitors:
Crown Law Office, Wellington for Respondent

[13] *R v AM (CA27/2009)*, above n 7.