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IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA734/2017
[2019] NZCA 423**

BETWEEN WILLIAM KATIPA
Appellant

AND THE QUEEN
Respondent

Hearing: 3 September 2019
Court: Collins, Wylie and Ellis JJ
Counsel: Appellant in person
 B F Fenton for Respondent
Judgment: 10 September 2019 at 3.00 pm

JUDGMENT OF THE COURT

- A The application for leave to appeal out of time is granted.**
B The appeal against sentence is dismissed.
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REASONS OF THE COURT

(Given by Collins J)

Introduction

[1] Mr Katipa appeals a sentence of preventive detention with a minimum period of 15 years' imprisonment (MPI) to be served concurrently with an existing sentence of preventive detention.¹

[2] The sentence in issue was imposed after Mr Katipa was found guilty following a trial by jury of five charges of sexual violation, one charge of attempted sexual violation, four charges of indecent assault, three charges of threatening to kill and one charge of assault with intent to injure.

[3] Mr Katipa filed his notice of appeal out of time. The delay was minimal and we accordingly grant leave to appeal out of time in order to deal with the merits of the appeal.

Previous offending

[4] It is helpful to first summarise the key features of Mr Katipa's prior offending in order to place in context the convictions that led to the sentence Mr Katipa has appealed.

[5] In 2002, Mr Katipa was convicted of two charges of sexual violation by rape, threatening to kill and performing an indecent act. The victim was a 13-year-old girl, [redacted]. He was sentenced to 11 years' imprisonment with an MPI of 7 years for that offending.²

[6] While serving the sentence we have referred to at [4], Mr Katipa was charged with offending in 1994, in which he broke into the home of a 19-year-old woman whom he raped and threatened to kill. For that offending Mr Katipa was sentenced in February 2005 to preventive detention with an MPI of 10 years.³

¹ *R v Katipa* [2017] NZHC 2811.

² *R v Katipa* HC Hamilton T020855, 19 September 2002.

³ *R v Katipa* HC Hamilton T040050, 18 February 2005.

Index offending

[7] While serving the sentence of preventive detention, Mr Katipa committed serious sexual offences against three prison inmates.

[8] The first of the victims was F, a 27-year-old cell mate of Mr Katipa. In October 2006, Mr Katipa kissed F's neck, fondled his penis and made F penetrate Mr Katipa's anus with his penis. Soon after Mr Katipa penetrated F's anus with his penis and the following day he threatened to kill F if he should tell anyone about what had happened.

[9] In September 2015, K, a 24-year-old inmate was required to share a cell with Mr Katipa. Mr Katipa told K to get on his knees. When K did not do so, Mr Katipa struck him on the head and then penetrated K's anus with his penis. Mr Katipa threatened to kill K if he told anyone about what had occurred.

[10] In November 2015, T, who was just 19 years old, was placed in Mr Katipa's cell. Mr Katipa repeatedly indecently assaulted T by making T suck his penis and by making T place his penis into Mr Katipa's anus. Mr Katipa also attempted to penetrate T's anus with his penis. Mr Katipa held a makeshift knife to T and threatened to kill T if he told anyone about the offending.

Health assessors' reports

[11] In his report, Dr Duggal, a consultant psychiatrist, noted Mr Katipa denied the 2002 offending and the index offending. Mr Katipa was assessed as being at a very high risk of reoffending, and very high on the psychopathy scale.

[12] Mr van Rensburg, a clinical psychologist, noted Mr Katipa's behaviour reflected his disregard for the dignity of others and his willingness to satisfy his own sexual needs regardless of the impact it had on his victims. The psychologist noted Mr Katipa had engaged in a pattern of both opportunistic and planned sexual offending.

[13] At the time of his sentencing, Mr Katipa was 51 years of age.

Sentencing decision

[14] Downs J, the High Court Judge who sentenced Mr Katipa, identified six aggravating factors in his offending:⁴

- (a) The offences were premeditated and involved Mr Katipa evaluating each of his victims and taking steps to cover up any possibility of him being detected.
- (b) The high level of gratuitous violence. Mr Katipa threatened to kill each of his victims and in some instances, additional physical violence was inflicted upon those whom he was attacking. Each victim was terrified by Mr Katipa.
- (c) The harm caused to each victim.
- (d) The vulnerability of the victims, each of whom was considerably younger than Mr Katipa and locked in the cell with him at the time of the offending.
- (e) The scale of the offending, which involved three victims who were subjected to a range of indignities.
- (f) The offences were committed while Mr Katipa was serving a sentence of imprisonment for sexual offending.

[15] The High Court Judge assessed Mr Katipa's offending as being at the top of band 3 of *R v AM*, and on the cusp of band 4 of that decision.⁵ This assessment led to Downs J adopting a starting point of 17 years' imprisonment.

[16] In assessing whether or not to impose a sentence of preventive detention, Downs J was in "no doubt" that a lengthy determinative sentence would not provide adequate protection to the community because Mr Katipa posed such a high risk of

⁴ *R v Katipa*, above n 1, at [14]–[26].

⁵ *R v AM (CA27/2009)* [2010] NZCA 114, [2010] 2 NZLR 750.

reoffending.⁶ In the circumstances, Downs J concluded Mr Katipa should again be sentenced to preventive detention with an MPI of 15 years.

Grounds of appeal

[17] Mr Katipa was no longer represented by counsel when we heard his appeal. He submitted to us there were three defects with the approach and conclusion reached by Downs J:

- (a) it was not necessary to impose preventive detention in his circumstances;
- (b) it was not necessary to impose an MPI; and
- (c) the MPI of 15 years was manifestly excessive.

Analysis

[18] The court's ability to impose a second sentence of preventive detention concurrently is not controversial.⁷ It is a matter of discretion which must be exercised on a "principled basis".⁸

[19] In assessing the merits of Mr Katipa's appeal, we have had regard to the following matters:

- (a) Mr Katipa has now committed serious sexual offences against five victims between 1994 and 2015.
- (b) Mr Katipa's offending has involved violence over and above that inherent in his sexual offending.

⁶ *R v Katipa*, above n 1, at [43].

⁷ *T (CA43/2013) v R* [2013] NZCA 497 at [23]; *R v Mackrell* (1998) 16 CRNZ 1 (CA) at 8; and *R v Howse* [1963] NZLR 971 at 972.

⁸ *T (CA43/2013) v R*, above n 7, at [26].

- (c) Mr Katipa has not been deterred by a sentence of preventive detention but instead, he has preyed upon vulnerable cell mates.
- (d) Mr Katipa poses a high risk of reoffending.

[20] In applying the factors in s 87(4) of the Sentencing Act 2002 that are relevant to a sentence of preventive detention, we are satisfied:

- (a) Mr Katipa has a pattern of serious offending. He has carried out extremely serious sexual offending against five victims over a 21-year period. He has taken advantage of vulnerable victims for his own sexual gratification.
- (b) The seriousness of the harm Mr Katipa's offending has caused to the community and to his victims is significant. In the High Court, the victims' impact reports spoke of the trauma they have suffered as a result of the violence and indignities perpetrated upon them by Mr Katipa.
- (c) The health assessors' reports confirm there is little doubt Mr Katipa is likely to reoffend again in the future.
- (d) Mr Katipa has taken no steps to address the causes of his offending and maintains his innocence in relation to all but the 1994 offending.

[21] Like Downs J, we recognise that it is preferable to impose a lengthy finite sentence than an indefinite sentence. In Mr Katipa's case, however, society will not be adequately protected by a finite sentence.

[22] The sentence imposed by Downs J was entirely appropriate in order to protect the community from Mr Katipa, who clearly poses a significant and ongoing risk to members of society.

Minimum period of imprisonment

[23] We have reflected upon whether the MPI of 15 years was excessive in light of the fact Mr Katipa has previously been subject to a 10-year MPI that expired in 2015. In effect, Mr Katipa will be subject to MPIs totalling 25 years. By any analysis that is a long period of time to be subject to MPIs. We conclude, however, the MPI of 15 years imposed by Downs J was necessary in order to reflect the gravity of Mr Katipa's offending and to protect the safety of the community.

Result

[24] The application for leave to appeal out of time is granted.

[25] The appeal against sentence is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent