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NZLR

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

S.25/84

533

REGINA

v

W

RUDELL

Counsel : Mrs. Shaw for Crown
 R.P. Chambers for Accused

Sentence : 1st May 1984

PRE SENTENCE REMARKS OF CHILWELL J.

I propose to defer sentencing of this matter for a few days for several reasons. The first is that in a case R v Banbury (C.A. 186/83) the Court of Appeal on 16th December 1983 reduced an effective term of 8 years' imprisonment to one of 5 for offences of this nature citing sentencing instances in England of quite an horrific nature with reference to sexual offences against children where the English Courts apparently have said that long sentences have no deterrent effect in this type of crime and one finds, looking at the English authorities, substantial sentences imposed by trial Judges reduced to what appear to me to be quite minimal periods by the English of Appeal Courts/and that precedent appears to have been followed by

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the Court of Appeal here in the case to which I refer.

Shortly before Easter the Court of Appeal delivered a decision on the whole topic of rape sentencing. None of the Judges in Auckland have, as yet, seen it. It may well be that the Court in that case has taken the opportunity to review not only rape but matters such as this and I would feel it necessary to consider that authority in order to see if there is any change in their attitude since they delivered the decision in Banbury.

It seems to me that this may well be a case warranting preventive detention under Section 24 of the Criminal Justice Act. It is for that reason that I asked if I was to receive submissions from the Crown. The matter is, in my view, so serious, and it involves matters of public alarm, that I require to be addressed in full by the Crown on this sentencing procedure. That cannot be done today until I see the Court of Appeal decision on the rape matter and it cannot be done without giving you and the Crown sufficient warning that I have in mind preventive detention. It may be that in the end preventive detention is not the proper sentence but certainly, prima facie, it is.

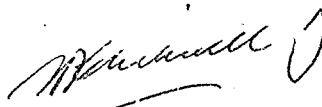
It could well be that I require a further report from an officer of the Department of Justice and if the Probation Officer is here - is he - (Probation Officer acknowledged that he was present) I would like to know what sort of officer of the Department of Justice is anticipated by that. I will read you the section :-

25.(1) "Before sentencing any offender to preventive detention, the Court shall consider any report that may be made to it by a probation officer or by the Superintendent of a penal institution or by any other officer of the Department of Justice."

Of course, I have a Probation Office report; I have two psychiatric reports. I cannot see any point in obtaining a report from a Superintendent of one of our jails because this particular man has not really been in any prison long enough, I would imagine, for any Superintendent to know much about him. What is meant by "any other officer of the Department of Justice". Would that mean a psychologist? (Verbal interchange with Probation Officer, Mr. Fisher).

I propose then to remain Mr. Ruddell to Friday this week at 9.30 a.m. In the meantime I ask the Probation Officer now in Court for the appropriate report under the preventive detention provision of the Criminal Justice Act, that report to be counter-signed by a senior probation officer. I will ensure that I receive the Court of Appeal judgment by Friday.

I would not like it to be thought that my mind is made up on this. It certainly is not I have merely taken a prima facie view and I want full argument and I will keep an open mind about the matter until after I have heard the argument and have to make up my mind.



1st May 1984.