

M. Percy

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

S. 25/84

REGINA



PERMANENT SUPPRESSION OF NAMES

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Counsel : D. Percy for Crown
R.P. Chambers for Accused

Sentence : 18th May 1984

SENTENCE IMPOSED BY CHILWELL J.

The sexual offences pertaining to your guilty plea took place continuously over a period of 5¹/₄ years when you were living at the home of [redacted]. The victims were [redacted] three daughters. You were in the position of a father to them, exercising parental care and control. The offences came to the notice of the police when the middle girl [redacted], aged 14, ran away from home to escape your sexual abuse of her. That was on the 14th February 1984.

In 1978, when [redacted] was 9, you performed oral sex upon her. Subsequently, that progressed to inducing her to perform oral sex upon you. Those offences continued on a

semi-regular basis over a lengthy period. Eventually you attempted to have sexual intercourse with her. On 24th March 1981, when [redacted] was only 11, you had full sexual intercourse with her. From then you continued to have full sexual intercourse with her and to commit other indecencies with her until just before Christmas 1983. It was then that [redacted] objected to your advances. You continued to pester her. Eventually she ran away from home. In her case the charges are that between 4th September 1978 and 4th September 1979, when she was 9, you did indecent acts upon her; between 4th September 1979 and 4th September 1980, when she was 10, you induced her to do indecent acts upon you; between 4th September 1980 and 24th March 1981, when she was 11, you attempted to have sexual intercourse; on 24th March 1981 you had sexual intercourse and between 25th March 1981 and 26th December 1983, when she was between 11 and 14, you had full sexual intercourse with her.

In the case of the eldest girl, [redacted], now 16, the procedure was similar. You started entering her bedroom at night, indulged in foreplay with her private parts and she with yours. This continued over a period of months. Eventually you instructed her how to perform oral sex upon you. That progressed to you committing oral sex upon her. She was then 11. The further progression was attempted sexual intercourse. Eventually, on 6th June 1980, you had full sexual intercourse with her. She was then 12. From then you continued to have full sexual intercourse with her, to perform oral sex on her and have it performed on you. The last occasion of sexual activity was between December 1983

and January 1984. It involved full sexual intercourse. In her case the charges are that between 6/10/78 and 6/10/79, when she was 11, you did indecent acts upon her; between the same dates you induced her to do indecent acts upon you; on 6/6/80, when she was 12, you had sexual intercourse with her and between 6/6/80 and 31/1/84, when she was between 12 and 16 years of age, you had sexual intercourse with her.

The youngest daughter, , also fell victim to your sexual advances. She is now 10. The procedure was again similar. You instructed her how to commit oral sex on you. The next step was the reverse situation. She was then 7. You invented a phrase for this conduct - "balancing chemistry". If you asked her to balance your chemistry that was the signal for her to commit oral sex on you. If you asked her if you could balance her chemistry that was the signal that you would commit oral sex on her. This conduct with her ceased sometime in 1983. She was then 9.

You agreed that you committed oral sex on her about 5 times and that the reverse situation applied on 5 occasions. In case the charges are that between 10/9/80 and 10/9/81, when she was 7, you induced her to do indecent acts upon you and between 10/9/81 and 10/9/82, when she was 8, you did indecent acts upon her.

The charge under the Misuse of Drugs Act relates to the possession of cannabis. When the police executed a search warrant following complaint they found a small quantity of cannabis and some cannabis seeds which you

maintained, and still does, that at first she was unaware of the sexual offences. Eventually she became aware. Because of threats by you and assaults on her she was too frightened to do anything about it. That fear was translated to the girls. They feared for themselves and for their mother. So they said nothing. In the beginning each girl believed that what was happening was normal. They say you told them it was normal for a father so to conduct himself with his daughters.

You do not accept that [redacted] and the girls were really victims. You blame [redacted] Your counsel said a lot about that when the matter was last before me. The newspapers picked it up. [redacted] side of the case was not then stated. Your counsel gave the following explanation which is completely at variance with [redacted] version. You completely deny violence of any relevance to the matters in hand: you first met through her husband; when you were released from prison, on the occasion later to be referred to, you found life pretty bad: your two sons, for whom you had much fondness, had gone to live with [redacted]: you ascertained that a liason of a sexual nature had developed between your sons and [redacted] They were then 15 and 17. It is claimed that [redacted] had a phobia for young adolescent boys and set about seducing them. It is said, you did not know what to do: when you took the matter up with [redacted] she offered her three daughters as a palliative. It is said that she actively encouraged the girls involvement in all forms of sexual misbehaviour with you.

It is not necessary for me to determine that conflict. Indeed, it is impossible to do so without evidence. In fairness to you it should be stated that the Probation Officer obtained confirmation from your son and from that there was a sexual relationship between her and your two sons. Further in fairness to you, to one of the psychiatrists you stated that the situation first arose when, at the time of an exchange of birthday presents, called her daughters into your joint presence, had oral sex with you in their presence and then taught them the technique. In fairness to it should be stated that she strongly denied to the Probation Officer that she ever allowed or facilitated sexual misconduct between you and the daughters. I imagine she has not been shown the passage I refer to in the psychiatric report. I would infer from her denials to date that she would probably deny that too.

If your version is the correct one what sort of an excuse is it? You are 46 years of age. Both the psychiatrists are impressed with your level of intelligence. I am grateful to both psychiatrists for the way in which they gave their evidence today. Dr. Ogg, in his written report, said that your intelligence was considerably above average. Dr. Gluckman, in his first written report, said that you had demonstrated to him that you had logical thinking of a high order. Notwithstanding your counsel's very sincere submissions, it is my view that your excuse exposes you for what you are: that is an amoral sexual pervert. The psychiatrists call you a psychopath. It is

my view that while you remain such you are quite unfit to have any contact with young women and girls.

In regard to the offence the only extenuating circumstance is your plea of guilty. I said previously that you made a full and complete confession right from the beginning. I was wrong about that. At first you denied the allegations when put by the police. On 23rd February 1984 you elected trial by jury. The date for the taking of depositions was fixed for 10th April. On 28th March 1984 you had the matter called; you elected summary jurisdiction; you entered a plea of guilty. Subsequently, the District Court Judge declined jurisdiction. You were committed to this Court for sentence. I will take into account your guilty plea but not on the basis of a full and complete confession right from the beginning.

Both you, your counsel and the psychiatrists are aware of my prima facie view that your case requires consideration of preventive detention. You qualify because on 19th December 1974 you were convicted of indecently assaulting a girl under 12. You were imprisoned for 15 months. The victim was your second wife's daughter by an earlier marriage. Full details of that offence are not before me. The purpose of a sentence of preventive detention is the protection of the public. The Court has to be satisfied that it is expedient for the protection of the public that you should be detained in custody for a substantial period. If so satisfied, the Court has a

discretion, instead of passing any other sentence, to pass a sentence of preventive detention. It is a sentence of indefinite duration requiring a mandatory period of detention of 7 years before consideration for parole.

Factors which support preventive detention in this case are the continuous nature of the offences spread over 5¹/₄ years, the offences themselves, the ages of the victims, your position of parenthood, your dominance over the girls and your psychopathic personality.

The contrary proposition advanced by your counsel is supported by his submission that as a sentence of preventive detention is open ended it is inhuman in nature. He referred to a person who has served 35 years. That person is still in prison. Concerning your personal circumstances, his submission was that you have a serious heart condition. We have heard about that today. It is serious: serious enough to preclude chemical treatment, depending on the opinion of the particular psychiatrist who might be called upon to do it. The submission proceeded that you are an individual of an intelligent, sensitive nature: there is the possibility of you committing suicide: there is the further possibility of murder at the hands of other inmates. In the event that the Court opts for preventive detention your counsel expressed the "hope" that you might one day return to society if the system permitted you to survive. He went on to submit that such a sentence would run contrary to the evidence of your need for treatment and the possibility of success.

Today I have had the benefit of psychiatric opinions directed in particular to the question of treatment. It seems that about the only place in New Zealand where treatment would be available would be Ashburne Hall in Dunedin. There are mild differences between the psychiatrists as to whether such treatment ought or ought not to be undertaken. The emphasis of the psychiatric evidence is that, from a practical point of view, treatment is not available within the prison system because of the necessity for the patient and the doctor to be at one and have faith in each other and the necessary understanding, inter se, for the psychiatrist in question to get to and explore the depths of the human mind. Moreover, it is impossible to set up the necessary background for prolonged, relaxed interviews between doctor and patient within the prison system.

We hear a lot today about prison reforms. A lot of what I hear is inconsistent. There are cries for heavier punishments for this type of offence. On the other hand, for other offences which seem equally as bad, there are complaints that the Courts ought not to put people in prison who really ought to go to psychiatric institutions. I have no doubt that the law and psychiatry, at the moment, are not in tune. It may be that when those responsible for considering changes in the penal policy come to consider this particular question, some attention might be given to the treatment of offenders rather than to their incarceration. But that costs money and I suspect that, in the end, the economics of the situation will govern what in fact happens,

notwithstanding what might appear in glossy language in any new Statute. However, at the moment, I am obliged to deal with you according to law and according to the very limited sentencing options available to me.

Your counsel has asked me to deal with you mercifully. He has exhorted me to put aside one's natural abhorrence of your conduct. He has advanced the proposition that really you are a realistic, conscientious person: that you have come to the realisation now that you have got to take help and treatment, if necessary. It is his view that society would be best served if I admitted you to probation for, say, 2 years, with a direction that you undertake psychiatric treatment in an appropriate institution and with some provision for regular reporting to the Court. It is further suggested that on some of the counts I should remand you or, alternatively, sentence you under the provision which enables the Court to call you up for sentence if called upon. In that way, it is thought that the Court could monitor your treatment and behaviour leaving it, really, to you to cure yourself with the help of psychiatry.

There is support for that view from some of the psychiatric evidence. Dr. Gluckman would not really support it in the light of current penal policy. Dr. Ogg would like to see something attempted along the lines of what you, Mr. Chambers, put to me. Both psychiatrists are particularly concerned that a lengthy period in prison will not benefit you because of the treatment likely to be given in the

prison institution by other inmates. Dr. Gluckman, in particular, is concerned that your heart condition is such that the fear of living constantly under a cloud of possible assault will exacerbate that condition, that any approach of an unfriendly nature to you, which might cause you to lose your temper, could precipitate a fatal heart attack. Finally, of course, there is the physical side of an attack upon you. One can readily understand the merciful attitude of the two psychiatrists whose function in life is the healing of the sick.

So far as what happens in prison is concerned, theoretically, of course, what I have been talking about, ought never to happen. One, however, does not live in isolation on the Bench. One does read the newspapers. One knows that things go on in the prison system which ought never to be permitted. The responsibility for that lies fairly and squarely upon the Government Department which runs the prisons and on the Minister of the Crown responsible for running the Government Department. It is not good enough for those responsible to Her Majesty the Queen in this area to sit back and do nothing, nor is it appropriate, when something such as a suicide or a murder happens, to blame the Courts for sending the particular individual to jail when sending that individual to a psychiatric institution may have been more appropriate. If one had the facility, through our legislation, to achieve perfection one could do something about it. I do not have that facility.

I have decided, for the reasons advanced by your counsel and because of the evidence given by the psychiatrists and in particular because of your heart condition, that it would be inhuman to sentence you to preventive detention. I have come to that conclusion solely on your personal circumstances for I still hold the view that the offences themselves do justify preventive detention. What then is one to do? It is impossible to consider probation. The public are entitled to have their revenge in the form of a prison sentence. The public are entitled to be protected from you. The only way that can be achieved, within the present system, is to impose a term of imprisonment.

It is necessary for me to deal with each count. So far as the cannabis offence is concerned you are sentenced to one month's imprisonment.

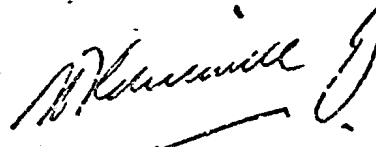
I turn now to the counts of indecent acts on girls under 12 and the counts of inducing girls under 12 to do indecent acts upon you. They carry the maximum term of 10 years' imprisonment. In your case I would have thought, having regard to other sentences for similar crimes, that 8 years' would be appropriate. I do, however, give you credit for your plea of guilty and for the fact that you have been in custody for 3 months. I therefore discount the sentence of 8 years on those counts to a term of imprisonment of $6\frac{1}{2}$ years on each to be served concurrently.

For some reason the law regards attempted sexual

intercourse and intercourse with girls under care and protection as worthy of less in terms of imprisonment, than the others. The maximum term is 7 years. I think that, giving you credit for the matters to which I have referred, the appropriate sentences on each of those counts is $4\frac{1}{2}$ years to be served concurrently with the others.

While you are in prison it is to be hoped that the prison psychiatric service and the ordinary medical service will afford you such assistance and treatment as is available. I accordingly direct that the matter be referred to the prison psychiatric service and that all my sentencing remarks and all the reports, that is probation and psychiatric, be sent to the Prison Superintendent. There is the question of your safety in prison. I place that squarely on the Minister in charge of the Prisons Department.

There is finally the question of suppression of name. I have dealt with that before. The order that I made on the last occasion, for the reasons then given, is now made permanent.



18th May 1984.

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