

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

T.198/94

THE QUEEN

v

CHARLES ROBERT AFEAKI

Offence: Indecent Assault (7)
Inducing an Indecent Act (1)
Permitting an Indecent Act (2)
Performing an Indecent Act (3)
Attempted Sodomy (1)
Sodomy (1)

Sentenced: 19 December 1994 To: Imprisonment 8 years

Counsel: Mark Woolford for Crown
Hugh Fulton for Prisoner

SENTENCE OF THOMAS J

Solicitors for the Crown: Meredith Connell & Co (Auckland)

Mr Afeaki was convicted of seven charges of indecent assault, one charge of inducing an indecent act, two charges of permitting an indecent act, three charges of performing an indecent act, one charge of attempted sodomy and one charge of sodomy.

Mr Fulton made clear today that Mr Afeaki maintains his innocence of all charges. The Probation Officer has also commented upon Mr Afeaki's continued denial of his guilt and the fact that his family and friends are totally convinced of his innocence. Mr Afeaki would have his family and friends believe that he is guiltless; that four complainants and one witness conspired to give evidence against him and perjured themselves in doing so; that a senior police officer fabricated his record of his interview with Mr Afeaki, and that eventually the jury returned a wrong and perverse verdict. None of these things are correct. Mr Afeaki, to put it bluntly, is a wretched and self-dedicated hypocrite, who not only committed the offences for which he has been convicted, but also then maintained his innocence and lied on oath.

Mr Fulton referred to the fact that the charges relate to offending which occurred some 16 to 19 years ago. He asserted that what he called this "historical context" resulted in Mr Afeaki being prejudiced. It may be that in some cases this is so. I am not concerned to make a general statement. I will say quite emphatically, however, that there was no trace of any adverse prejudice to Mr Afeaki in the trial over which I presided. The evidence against him was immensely strong, and it lost none of its strength through relating to events that occurred some 16 to 19 years ago. Mr Afeaki's denial in evidence rang untrue, and it gained nothing in plausibility simply because of the lapse in time. I do not for one moment accept that his defence was

prejudiced. I accept, however, that from a sentencing point of view the distance in time is a matter to be taken into account. I propose to do so in the sentence which I will impose.

There were four complainants who came forward to give evidence. Another witness who gave evidence of Mr Afeaki's inappropriate behaviour while he was a pupil at school was not a complainant. The offending occurred at two different schools on young boys at a most impressionable and vulnerable age. For his part, Mr Afeaki was in a position of dominance. He wielded, next to parenthood, probably the most important position of trust over children that it is possible to wield, and he abused that trust. I will not detail the offending. Suffice to say, that Mr Afeaki's mode of operating emerged from the evidence that he gave. It is quite clear that many pupils were secure but some, whom I suspect were the more sensitive and susceptible, were initially approached in an exploratory way. One complainant, for example, gave evidence of how his ear was nibbled in the classroom. But this exploratory conduct progressed to much more serious sexual abuse with some, and eventually led to the commission of sodomy. One youth gave telling evidence of how he had been taken from his bed twice weekly to Mr Afeaki's bed and either sodomised or required to perform anal intercourse on Mr Afeaki. The youth estimated that the sexual abuse occurred between 80 and 100 times in the one year.

None of these youths were in a position to consent, or give any real consent, to what occurred. They did not and could not consent in a way which is recognised at law. In situations where the relationship is that of a dominant school master with all a schoolmaster's influence and potential to coerce, and the victims are young, impressionable and innocent students, consent is inherently absent.

The pre-sentence report must be one of the most comprehensive pre-sentence reports to be made available to the Court, including the breadth of the sources of the information on which the report is based. Without a doubt the Probation Officer has an advanced understanding of offending of this kind. He says in his report that paedophilia is, by its very definition, consistent and calculated. It sees offenders adopting a course of corruption for their own sexual satisfaction, with little or no regard for the consequences of their victimisation. Sentiments of this kind are widely endorsed in the literature on the subject.

The Probation Officer adds that Mr Afeaki was "involved in a complete breach of trust in respect of young people who looked up to and relied upon him". He observes that the offending was repeated and "on-going in nature, predatory and totally self-ingratiating". He also found Mr Afeaki's continued denial of the offending to be of particular concern. Effectively, he states, this means that Mr Afeaki is not prepared to take responsibility for his actions. He comments that this in turn makes any attempt at treatment a "nonsensical exercise" and places Mr Afeaki at the upper end of the high risk scale in terms of "relapse prevention". He bluntly states that, despite the historic nature of the offending, and although not inevitable, the risk of Mr Afeaki reoffending at this time must be seen as "extremely high". Again, the Probation Officer's observations are soundly based in the literature on the subject.

The victim impact statements are also comprehensive. As to be expected, the impact on those who have been the victims of Mr Afeaki's offending varies. The complainant who has probably suffered the worst, became extremely fearful, and suffered from primary insomnia at the time. He still

suffers from nightmares. He has frequent flashbacks to the abuse, and these flashbacks still occur. They increased in frequency and severity during the course of the trial. He suffered a deterioration in his marks at school and the standard of his school work declined. The complainant has since had a dysfunctional relationship with the opposite sex, and now faces problems in that regard. As to be expected, he has difficulties trusting people and feels that he cannot trust anyone. It is unfortunate that this symptomology, which had responded well to counselling, has returned to its previous severe levels as a result of the trial. That is not uncommon, but it was no doubt exacerbated by the cruel and baseless allegations which were frequently made against him by the defence during the course of the trial. I have no doubt, as does the psychologist, that the effects of the sexual abuse will be on-going.

The consequences for the complainant who seems to have suffered the least from the abuse were more short term. His grades dropped markedly at the time and he became very cynical and extremely distrustful of all adults. He suffered low self-esteem and a lack of confidence. But he now feels confident that he is able to cope with what happened to him. The other complainants report in similar terms to these two.

Mr Fulton referred at some length to what he described as the "legislative policy" as now evidenced by the Homosexual Law Reform Act 1986. I am not in a position to comment on the various submissions made by Mr Fulton, or the implications of those submissions if they are correct. I have not given the matter the study that would be warranted before I should comment. But it would seem, on the face of it, to be an unacceptable anomaly if offending of the kind in question in this case is not able to be prosecuted today because of a one year limitation period introduced by that Act. I do not

accept that this was the legislature's intention. In any event, Mr Afeaki has been tried and found guilty, and I propose to sentence him in a manner which will recognise the criminal culpability of his offending.

I believe that Mr Afeaki's good record as a teacher is of more substance than the more legal or technical type of arguments advanced at length by Mr Fulton. I have no cause to doubt that throughout the course of his teaching career Mr Afeaki has been an outstanding teacher. I also have regard to the fact that he has a good record as a community worker. He has demonstrated over many years a keen sense of community service. I will also have regard to Mr Afeaki's background in a religious organisation, although I am disturbed to note that there is a significant discrepancy between Mr Afeaki's evidence as to why he left the Order and what is stated in the pre-sentence report. In evidence, Mr Afeaki declared that he left the order in Order to look after his mother. That may have been a factor, but in the pre-sentence report he is reported to have explained to the Probation Officer that it was only with some reluctance that he remained with the Order. He admitted that his primary concern lay elsewhere and said that he had realised that he had lost his vocation for the religious life. But, undoubtedly, Mr Afeaki's good record as a teacher and community worker must have a bearing on the penalty which is imposed.

Mr Woolford for the Crown stressed that the offending is of the kind which the public requires to be protected from and that the penalty should recognise both the deterrent aspect and the risk of Mr Afeaki reoffending. These are valid factors to be taken into account. I would add the need to impose a penalty which reflects the community's denunciation of offending of this kind in situations where the offender is a school master having charge

of pupils who have been entrusted to his care at school, at school camps, and the like.

I believe that it is recognised today that there is a far greater need to be vigilant to offending of this kind. In fact, one of the complainants did report the fact that he was being sexually abused to another master. Mr Afeaki brought pressure to bear on the youth and at a subsequent meeting he recanted his story, proffering the explanation which had been coerced by Mr Afeaki that he had been indulging in a sexual fantasy. It was, of course, nothing of the sort. The master to whom he reported was only 28 years of age, and the matter was taken no further. One would expect that today a far more intensive investigation would take place. The lasting damage to the young victims is far too great for it to be otherwise.

Having regard to all these factors, I impose the following sentences: in respect of the first count of indecent assault, I sentence Mr Afeaki to two years imprisonment; in respect of the second count of indecent assault, I sentence Mr Afeaki to two years imprisonment; in respect of the third count of indecent assault, I sentence Mr Afeaki to three years imprisonment; in respect of the fifth count of indecent assault, I sentence Mr Afeaki to three years imprisonment; in respect of the sixth count of attempted sodomy on a male then under the age of 16 years, I sentence Mr Afeaki to six years imprisonment; in respect of the seventh count of inducing a boy under the age of 16 years to do an indecent act, I sentence Mr Afeaki to three years imprisonment; in respect of the eighth count of indecent assault, I sentence Mr Afeaki to one years imprisonment; in respect of the ninth count of indecent assault, I sentence Mr Afeaki to three years imprisonment; in respect of the 10th count of indecent assault, I sentence Mr Afeaki to two years imprisonment; in respect of the 11th count of doing an indecent act on

a youth under the age of 16 years, I sentence Mr Afeaki to two years imprisonment; I impose the same penalty in respect of count twelve; in respect of count 13 Mr Afeaki is sentenced to three years imprisonment; in respect of the charge of sodomy in count 14, I sentence Mr Afeaki to eight years imprisonment; in respect of count 15, of permitting a boy under the age of 16 to do an indecent act upon him, sodomy, I sentence Mr Afeaki to five years imprisonment, and in respect of the final count, 16, of permitting a boy under the age of 16 years to do an indecent act, I sentence Mr Afeaki to four years imprisonment. All terms of imprisonment are to be served concurrently.

19 December 1994