

Clare
128(1)(b)
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IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

S NO. 98/96

R v ROBIN DAVID S.

Date of Sentence: 21 February 1997

Counsel: P K Feltham for Crown
V C Nisbet for Prisoner

anal

plus 4y

C6x C11x

SENTENCING NOTES OF HERON J

22, 26, 28

Solicitors:

Crown Solicitors Office, Wellington for Crown
Hewat Nisbet & Ord, Wellington for Prisoner

S. you appear on two charges of sexual violation, one of anal intercourse with a boy aged 11, together with a series of indecent assaults or indecent acts, largely arising out of the one incident, and a series of indecent assaults on another boy aged 10 years. The first of the boys was picked up in an inner-city park. The second was a friend of that boy whom you met in Porirua. The common feature of the offending is that you overwhelmed these two boys bringing pressure to bear on them to consent to your advances, using your age and physical strength to sexually violate one of them, on more than one occasion, and indecently assault the other.

You are presently aged 18 years, just 18. You were 17 years when this offending occurred. You have no previous history although the police note an incident which appears in many respects similar on 7 August 1996. I do not regard that of course, as any evidence of previous offending, but it is interesting that the police were concerned about you and drew that to the attention of your parents. Notwithstanding no doubt what they said to you, you continued from August down to the time you were arrested, in the way that is set out in the police summary of facts. You continued, following that incident, your stated intention to have sex with persons younger than you and there is evidence that you in entering upon your adult life, have accepted your homosexuality, and consequences of that.

A disturbing feature of this offending to which your counsel and counsel for the Crown have properly drawn my attention, emerges from the Probation Officers report and the psychiatric report ordered. That is a predetermination on your part to continue this lifestyle and an unwillingness on your part to realise the gravity and impact of your conduct on others. At the same time your candour, and I think inherent truthfulness has resulted in you expressing that attitude, and I do not overlook that.

Both of your victims were boys who were having trouble in any event, and were vulnerable and receptive to your advances in the first place. Your behaviour towards them was in my view, bullying and coercive. You took them to your home

in a secret and devious fashion, hiding them there even though your parents were in the house at the time. One of them, if not both of them, were foot-loose street kids.

All of the reports indicate that there is a very serious danger of reoffending. When I say all of the reports, the three reports. For one so young and without a previous history, I have had some difficulty in accepting that conclusion but having read all the information carefully, I think it a responsible view and one which must predominate in this sentencing. In other words the protection of members of the public and in particular males under 16 years whom you have targeted and apparently intend to target, have to be the concern of the court.

I have read in particular the report from Wellington Stop, the action programme for adolescent sex offenders. As the report indicates, you are probably more open to treatment at this time in your life than at any other stage, but they believe your current belief system, as they put it, is strongly held and will not be simple to shift. That is a sad commentary on one whose sexuality I would have thought, had yet to really mature. They indicate that a residential adolescent treatment programme for sexual offenders would be appropriate, but none exist in New Zealand. What do exist are two excellent programmes for adult sexual offenders. The Te Periti in Auckland and the Kia Marama Programme in Christchurch, run respectively at the prisons there.

There is some evidence also to suggest, that already the corrupting influence of like minded adults with possible access to pornographic materials has been at play. The evidence is not clear about that, but I think in the company you have been keeping, that is very probably been an influence and it must end. There have been difficulties for you on remand in a prison and you have been assaulted, so I am informed. That risk should be reduced once you are out of remand and in your permanent place in prison, where no doubt efforts will be made to keep you apart from adult prisoners, particularly adult prisoners who are sexual offenders.

Notwithstanding your parents who are deeply concerned as to your welfare and probably have the resources and the experience to monitor your ongoing behaviour, their inability to control you in the past appears to me not to auger well for your conduct in the future, when you will be older and obviously growing less amenable to domestic discipline.

I agree with the conclusion in the Stop report that these controls will not be easy. It may be that the type of therapy that you need is better administered in the community, but then the risks to the class of persons already mentioned, come into play. I have taken the view that that risk is too great and that the best course for you is to serve a reasonably substantial term of imprisonment at the end of which you will be eligible by reason of your age to undergo the adult sexual offenders treatment programme. That is generally available in the last year or more of your sentence. What I intend to do is impose a sentence which will mean having regard to parole, you will be eligible in the last year of the sentence you serve, for the sexual offenders programme, as an adult offender. I did contemplate a sentence of corrective training but you have already spent some time in custody, which would, as I understand the way in which that sentence is supervised, be regarded as time served. Effectively you would be released from that almost before you had begun your three month sentence. Such a sentence would have had the advantage of showing you some coercive behaviour on the part of others, and could have been followed by a period of supervision with the detailed follow-up that is required.

S: I should tell you that if you do not address this desire that you have to have sex with boys under the age of 16, you will inevitably come before the courts again. Not only will you be shunned by society as a paedophile, but you will be shunned in the prisons in which you will no doubt serve many sentences. Then if you continue you could be likely to suffer quite long periods of incarceration. Society will not tolerate its young people being perverted in the way you have perverted these two young boys. It is not a question of their consenting or appearing to consent, they are not old enough to make that sort of decision and you should know that. On the other hand, there is no reason why you, if you are a

confirmed homosexual, that you cannot become a member of that community, the bulk of whom I imagine are law abiding persons, who confine their sexual activity with adult consenting like-minded people. Not children. That is the clear choice that you have and you are going to have some time to reflect on it.

I have been asked in the course of this sentencing, by submissions made directly to me to suppress your name. Not in your interest or in the interests of the victims, but in the interest of your brother and sister and your parents. There are members of the family who as I understand it, carry your name, although your parents do not, and could suffer. Likewise your parents are concerned that publicity about them would affect their employment and other matters. I am surprised to hear that. It would be a case of the sin of the son being visited on the parents. I would be surprised if any fair minded employer took an adverse view of these proceedings in so far as the parents are concerned. I simply say such an employer would be well advised to think long and hard before it took any steps on that basis.

As I will explain to your parents, there is an overriding public interest that the names of persons sentenced to this type of sexual offending, are in the public arena. They should be known to authorities, not just in respect of the publication today, but be able to be named and freely available to schools and other authorities. If a suppression order is made now it has ongoing effects which inhibit such ability to ascertain the identity of individuals and that cannot be allowed. Whilst I have sympathy for the requests that have been made to me, they cannot be acceded to. There will be no order restricting publication of your name.

Soberly, I have gone on in some length in this sentencing and it gives me no pleasure to sentence a man, barely 18 years of age, to a term of imprisonment, but for the reasons of the safety of the public, I am given no choice. The sentence however will be in relative terms a short one. It will not be standard sentence. You have pleaded guilty at the earliest opportunity it seems to me. Your biggest problem is acknowledging your difficulty and you will have time to reflect on that and you will have time also to further your education. The time you spend in

prison could be usefully spent in continuing your education and at the end of your sentence undergoing the treatment which hopefully will remove your propensity as I have described it.

On the sexual violation charge and the anal intercourse charge, you are sentenced to four years imprisonment. On the indecent assault charges in respect of boys, on all of those, you are sentenced to one years imprisonment. All terms are to be concurrent. You will therefore serve a sentence of four years. It is likely you will be released after two thirds, and in the period leading up to that time, you will be eligible as I estimate it, for the Kia Marama or Te Periti course. I direct the prison authorities that at an appropriate point you be considered for those courses. the sexual offender programme in particular, and that every effort be made to accommodate you notwithstanding your age. In the meantime you are to have the psychological services of the prison and they must be made available at the earliest opportunity. ~~S.121~~, notwithstanding what has been said about the ability to obtain treatment in the community, the prison services have extensive psychological services. They must be availed of in your case and no doubt will be. You should make the most of them.

Copies of the Stop Report and the S.121 report are to accompany my sentencing notes for the benefit of the prison authorities.

