PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 139 CRIMINAL JUSTICE ACT 1985.

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CRI 2008-004-3975

THE QUEEN

v

RONALD BRUCE VAUTIER

Hearing: 19 June 2009

Counsel: P S Dean for the Crown
P Winter for the Prisoner

Judgment: 19 June 2009

SENTENCE OF POTTER J

Solicitors: Crown Solicitor, P O Box 2213, Auckland 1140

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Introduction

[1] Ronald Bruce Vautier is before the Court for sentence having pleaded guilty to three charges of indecent assault on a female aged under 12 years. The offences relate to three different children aged 5-8 years at the time of the offending which occurred over a period of more than ten years between approximately 1979 and 1988. The maximum term of imprisonment for this offending is ten years imprisonment, which applied at the time of the offending, and is the current maximum sentence for an offence under s 133(1)(a) of the Crimes Act.

Background facts

[2] The offending occurred while the prisoner lived in the Moehau community in Port Charles, Coromandel. At the time he was aged approximately 29-38 years old and was a locum doctor practising as a general practitioner in Auckland City. To the children in the Mohehau community he was known as "Dr Ron". They would often play at his house located within the community and from time to time they would be left in his charge.

[3] Child A was aged 5-8 years when she was indecently assaulted by the prisoner. This occurred some time between 19 December 1979 and 19 December 1983. A was playing at the prisoner's house known as "The Dome" at the Moehau community, with other children. The game in which they were engaged involved them acting as high school students. The prisoner was naked and lying with A on his bed in his house. She was naked from the waist down. The prisoner had an erect penis. He continuously rubbed his erect penis against her vagina. From then on A tried to have as little to do with the prisoner as possible. She was frightened of telling her parents about what had been done to her by the prisoner.

[4] B was aged 6-8 years when she was indecently assaulted by Mr Vautier. The offending took place some time between 5 September 1983 and 5 September 1985. B was playing in the prisoner's home with a group of other children. She was in the

prisoner's bedroom with another child. He lay down on his bed next to B. He took her hand and placed it over his erect penis. She then lay on her back on the bed. The prisoner lay above her, held his erect penis and rubbed it against the outside of her vagina. She was not wearing underwear.

[5] C was aged 7-8 years old when she was indecently assaulted by the prisoner some time between 12 July 1986 and 12 July 1987. Again C was with a group of children playing at the prisoner's home. They were playing a game in which they were pretending to be grown ups. The prisoner pulled the front of his pants down and rubbed his erect penis between C's legs and on her vagina. This continued for about one minute. C was not wearing underwear. The prisoner treated it like a game pretending they were both adults and doing what adults do. This incident ended when one of the other children said to the group, "come on let's go", or words to that effect. All the children then left the prisoner's house.

Pre-sentence report

[6] I have been provided with a pre-sentence report which records that Mr Vautier is aged 59 years. For the last 20-25 years he has lived in an Auckland property which he owns. He has never been married and has no children. He studied for his medical qualifications at the University of Auckland Medical School from 1970-1977 and since graduating has been predominantly employed as a general practitioner. He expresses the hope that he can continue to practise as a doctor but he told the Probation Officer he had not considered a safety plan in relation to contact with children. I note Mr Winter advised in his submissions that Mr Vautier has not been practising as a medical practitioner since his arrest.

[7] Mr Vautier was involved with the Moehau Community from its inception in 1974 but the report records that contact has ceased since February 2008 when he was arrested. In relation to the offending to which he pleaded guilty, while accepting the summary of facts, Mr Vautier suggested that it was unlikely to have involved the young girls when they were over six years of age. He said there was "no coercion, might have been seduction, but you could argue who seduced who, but I am an adult and they are the child".

[8] He described himself as "exploratory in nature" and as having a "genetic pre-disposition to be exploratory". He said, however, that he appreciated that a child having sexual experiences with a much older person could and would find it damaging. As to whether he thought the behaviour inappropriate at the time, he said he "imagines it must have been at the back of his mind". He stated that the offending was "impulsive" and he did not consider the legal consequences of his actions, that it gave him a positive buzz and helped relieve boredom. He said he feels regret and shame for his actions.

[9] Sexual arousal was identified by the report writer as the key factor contributing to the offending. The report writer concluded that Mr Vautier demonstrated little insight into the significance of his offending and showed a lack of remorse or empathy towards his victims.

[10] Mr Vautier was assessed as meeting basic criteria and therefore eligible to undertake full assessment for treatment through the SAFE programme. When asked about undertaking sex offender treatment, Mr Vautier said he was not a sex offender and it wouldn't change anything. He said there was not the remotest chance that he would ever try this again and that it didn't pay off anyway. His motivation to undertake treatment was assessed as low. However, I note the advice from Mr Winter that Mr Vautier is willing to undertake treatment with the SAFE or another suitable programme.

[11] Because Mr Vautier has undertaken no sex offender treatment and demonstrated in the view of the report writer a limited insight into his offending, often minimising and normalising his actions, the report writer assessed Mr Vautier as of medium to high risk of re-offending.

[12] A more recent report has been obtained by the defence from Auckland Psychological Associates Ltd, Mr Greg Woodcock a registered psychologist. It is dated 2 June 2009. The report comprehensively deals with all relevant factors and the results from the tests undertaken by the psychologist. Mr Woodcock concludes that Mr Vautier poses a low to moderate risk of re-offending. He considers that the

risk would dissipate further if Mr Vautier was required to attend a treatment programme such as SAFE.

[13] Mr Vautier has no previous convictions for criminal offending.

Victim impact statements

[14] The impact of this type of offending invariably affects the victims for the rest of their lives, in their own personalities and their relationships with others. The victim impact statements provided by the three victims of this offending are vivid and sad testimony to the impacts of the offending. One victim states and in this I may be repeating extracts Mr Dean has already read to the Court but I read them for the sake of the record and because they are important:

> I feel Ronald Vautier took away my childhood. Even as an adult I live in fear that he could still hurt me. Ronald Vautier took away a part of me that I have lost for good. It resulted in me hating myself for years. Coping with the abuse became a massive issue that I had to cope with in silence and was unable to share with anyone else. It became part of my very makeup and remains part of me.

[15] Another victim states:

> Physical experiences I have endured as the result of the abuse I suffered by Ronald Vautier have included severe flashbacks, nightmares, disturbing thoughts, sleeplessness, panic attacks, feelings of always being on edge. He has taken away my childhood innocence and stolen the place I call home. The sly coercion with which he did what he did makes my skin crawl.

[16] And another says:

> I have spent my whole life feeling dirty and ashamed for what he did to me as a little girl. I think about how wrong it was, how he hurt me. The effects as an adult are varied and numerous. I lived for years thinking it was just me but now I know he did it to others.

[17] In the case of *R v Accused* (1998) 15 CRNZ 602 at page 7 the Court of Appeal, commenting on an appellant who had lived life with an unblemished record for 25 years since sexual offending in the early 1970's, said:

> Against the positive features of the appellant's life over the past 25 years, there has been no expression of remorse by him for the trauma occasioned to

> his victims of that early offending. So that whilst they have suffered throughout the intervening years, he, in contrast has been able to take full advantage of his freedom, in both a social and financial sense.

[18] The Court went on to say:

> … whilst the need for personal deterrence may have diminished or disappeared in the appellant's case there are no factors which displace the application of the principles of denunciation and general deterrence in determining the appropriate sentence.

Purposes and principles of sentencing

[19] Both counsel in their written submissions have helpfully referred me to the purposes and principles of sentencing in ss 7 and 8 of the Sentencing Act. I take them into account. In sentencing, the prisoner must be held accountable for the harm he has done both to the victims and to the community by his offending. The sentence must provide as far as it is possible for the interests of the victims, to protect the community from this offender, denounce the offending and deter the prisoner and others from committing the same or a similar offence.

[20] The Court is required to impose the least restrictive sentence in the hierarchy of sentences in s 10A Sentencing Act.

Aggravating factors

[21] The Crown refers to:

- Effects on the victims. Little more need be said. The victim impact statements are testament to the profound, detrimental effects of this offending on the victims throughout their childhoods and into their adult years.

- Abuse of trust. Mr Vautier was trusted by the families who comprised the Moehau community of which he was part from 1974-1988. Although the offending did not take place in the course of his practice as a medical doctor, his status as a general practitioner engendered the trust of the parents and families of these young girls. Accordingly the breach of trust involved in his sexual

offending against the victims, was enormous. Each of the victims in their victim impact statements refers to the trust in which Mr Vautier was held by the members of the community. The trust he abused.

- The vulnerability of the victims. They were very young children. They were highly vulnerable and prey to the manipulation of a much older and experienced man.

- Premeditation. Mr Vautier said to the probation officer that his offending was opportunistic. I do not accept that. He clearly used the opportunity presented to him by the children being placed in his care, to devise games in which he encouraged them to participate. Those games provided the climate and circumstances in which the sexual gratification he desired and planned for himself, could be effected. He was prepared to offend against his victims while other young children were present. I consider there was deliberate premeditation associated with his offending.

- The offending continued for a number of years during the period between 1979-1988, although there is no evidence of on-going offending in respect of any one of the victims.

- There were three victims of Mr Vautier's offending.

Mitigating factors

[22] There are no mitigating factors of the offending, which is accepted on behalf of the prisoner. Mitigating features in relation to Mr Vautier include:

- The guilty pleas which were entered once the Crown filed an amended indictment. The guilty pleas were entered at callover in the High Court on 18 February 2009.

- The prisoner's previous good character, but it has to be borne in mind that this offending took place a considerable time ago.

- The prisoner's good character and his positive lifestyle and contribution to society following the commission of the offences and up to the present time. A number of references have been provided for Mr Vautier attesting to his capability in his profession and the trust that people place in him. It does appear that he has been engaged in a positive lifestyle since this offending over 20 years ago. The Courts have been prepared to pay regard to this factor in mitigation of offending: see *R v H* CA 436/02 23 June 2003. However, as the Court of Appeal observed in *R v Accused* in the passage I have already cited, it is not a factor which replaces the application of the principles of denunciation and deterrence in determining an appropriate sentence.

- The effect for Mr Vautier of his public fall from grace and the loss of his livelihood as a medical practitioner. Again this is a factor, as Mr Winter noted in submissions, that the Courts have been prepared to take into account: *R v Fahey* CA 184/00 2 November 2000.

- I note that Mr Vautier has written a letter of apology to each of the victims which he has provided through the Police.

Approach to sentencing

[23] Mr Winter referred to the Court of Appeal authority in *R v R* CA 244/04 2 November 2004 as providing guidance.

[24] The Court said at [22] that the proper approach with a case of historical sexual abuse was to fix a starting point for sentencing based upon the sentencing levels of the relevant time which recognises the aggravating features of the case. The charges with which the Court was concerned in that case included rape and sodomy where the approach to sentencing had changed between the time of the offending in 1970-1977, and conviction and sentence.

[25] The maximum sentence for indecent assault which of course are the offences in issue here of ten years imprisonment, is the same now as it was in the period of the prisoner's offending, 1979-1988. In fact it has not altered since 1961. More

helpful as the appropriate approach to sentencing is the statement of the Court of Appeal in *R v Accused* to which I have already referred. The Court of Appeal said at page 609:

> A Judge passing sentence in the 1990's cannot do so through the eyes of a Judge who might have sat on the case in the 1960's or the 1970's, had it come to trial then. The starting point for any sentence must be fixed in the context of the maximum penalty available at the time and generally by reference to any discernible sentencing regime of that era. However, that does not involve attempting to reconstruct the sentencing mores of an earlier time. For example, if a particular type of offending was formerly regarded less seriously than now, present day attitudes must govern the sentencing approach.

[26] The Court said, having referred to several relevant cases, that those cases demonstrated that the sentencing approach in cases of child sexual abuse in the 1960's and the 1970's was no different to the approach of denunciation and deterrence currently prevailing.

[27] This approach was discussed and adopted by Miller J in sentencing for indecency offending in 1968-1978 in *R v M* HC WG CRI 2004-032-3626 22 April 2005.

Submissions and authorities

[28] Counsel for both the Crown and the prisoner presented comprehensive submissions and authorities to assist in the sentencing process. Both parties acknowledge there is no tariff case for indecent assault under s 133 and that few of the sentencing authorities have identical or even very similar facts. Accordingly each case must be considered on its own facts.

[29] The sentencing authorities dealing with sexual offending against children all emphasise the need for deterrence: *R v B* CA 214/04 4 October 2004.

[30] When sentencing for offences against young children, the following observations of the Court of Appeal in *R v Accused* CA 48/88 20 June 1988, should always be borne in mind:

> It is a well-settled principle that crimes of this kind call for a sentence which expresses society's emphatic denunciation of conduct which is a denial of elementary values. Such crimes are committed against a particularly vulnerable and helpless section of society who are in fact its most precious assets. Children who are victims of prolonged sexual abuse are robbed of much of the joy and innocence of childhood and may be badly affected for the rest of their lives in their own personality and in their relationships with others.

[31] While the passage I have just read refers to prolonged sexual abuse, it is amply clear from the victim impact statements in this case and the numerous judgments dealing with sentencing in sexual abuse cases, that sexual offending against children almost invariably has a hugely damaging effect. It pervades the very essence of the victim and negatives the enjoyment of life that every child is entitled to experience and to benefit from.

[32] Of the numerous cases referred to me in submissions *R v B* CA 281/98 12 November 1998 has relevant similarities. That case involved two charges of indecent assault against two victims aged 11 and 8. On three occasions the prisoner rubbed the first victim's vagina, once when she was unconscious. On one occasion the prisoner rubbed the second victim under her clothing. The offending took place during a period of eight years. The Court took into account that the offending was against two very young girls (though I comment not as young as the victims in this case); that it involved a serious breach of trust as the victims were the step-daughter and daughter of the prisoner. There was a late guilty plea. A sentence of three years was upheld on appeal.

[33] In *R v H* to which I have already referred, there were three convictions for indecent assault against two victims; one aged 13, the other 9. The 13 year old was grabbed from behind and pulled towards the prisoner so she was pressed up against his penis. He then tried to insert his tongue into her mouth. He kissed the second victim on the mouth using his tongue, grabbed her hand and placed it inside his underpants so it touched his penis. On another occasion he grabbed her hand and made her rub his penis. The offending had a deep emotional impact upon the victims. A starting point of three years was taken by the sentencing Judge. On appeal the Court considered that insufficient regard had been paid to the lengthy period since the offending during which the appellant had established a successful

new life, free of offending of this kind. The sentence of two years three months was reduced to 18 months on each charge to be served concurrently.

[34] As counsel have noted in their submissions, the circumstances surrounding this type of offending are almost limitless and unfortunately the cases dealing with sentencing are numerous. The individual facts of each case ultimately must inform the sentence imposed.

[35] The Crown submitted that taking into account the aggravating features, the seriousness of this offending within the spectrum of indecent assaults, the maximum penalty available of ten years, and the authorities referred to by the Crown, that a starting point for any one of the three offences would be two to three years. The Crown submitted and that an uplift of six months to one year would be appropriate to reflect the totality of the offending, giving a starting point between three to four years imprisonment. On my calculation the range for the starting point applying the Crown's methodology would be two and a half to four years imprisonment.

[36] Mr Winter, after referring to a lengthy list of authorities, submitted that an appropriate starting point for the totality of the offending was between two and two and a half years imprisonment. From the starting point identified he said there should be allowed a discount for the mitigating factors, in particular the guilty plea.

Sentencing

[37] In fixing the starting point I consider relevant the following features of this offending:

- Skin to skin contact including penis – genitalia contact.

- Multiple victims – three were separately abused.

- The youth of the victims – aged five to eight years.

- The significant breach of trust involved.

- Premeditation.

- The extremely negative impact on the victims.

However, the offending did not involve repeated offending against the same victim.

There was no penetration or ejaculation involved. I mention that because that is frequently an aspect of this type of offending.

There were no threats or violence to gain compliance or to dissuade or prevent the victims from disclosing the offending.

[38] I take a starting point of two and a half years for the earliest of the three indecent assaults. I increase that starting point by six months to reflect the two subsequent indecent assaults, each of the three assaults being serious in its own right. This produces an adjusted starting point of three years (36 months) to reflect the totality of the offending. I allow a discount of 12 months on account of the mitigating factors. This is a discount of one-third, to take account particularly of the guilty plea (which at least saved the victims the trauma of having to give evidence at trial), and also the offence-free and positive lifestyle that Mr Vautier has undertaken in the lengthy period since this offending, and the other mitigating factors to which I have previously referred. This results in an end sentence of two years' imprisonment.

Home detention

[39] I have given anxious consideration to the question of home detention urged on me by Mr Winter on behalf of Mr Vautier, but opposed by the Crown. I am not prepared to consider a sentence of home detention in the circumstances of this case. There is the difficulty to which Mr Dean alluded this morning, that the address proposed by Mr Vautier is considered unsuitable by those who prepared the home detention report. That has concerned me because I am aware Mr Vautier has lived at that address, apparently without incident, for a very lengthy period.

[40] But another factor that mitigates against a sentence of home detention is the level of risk that Mr Vautier, on the assessments of both the probation officer and Mr Greg Woodcock, continues to present. Mr Winter referred to the case of *R v Healy* CIV 2006-044-006242 14 October 2008, John Hansen J, where a sentence of home detention was imposed for, what he submitted, was more serious offending. But importantly in that case the Judge when imposing a sentence of home detention, noted that Mr Healy presented "a very low risk of re-offending". That is not the assessment in respect of Mr Vautier. This was serious offending. I do not consider home detention to be an appropriate sentence.

[41] Mr Vautier would you please stand.

Sentence imposed

[42] The sentence imposed on you, Mr Vautier, is two years' imprisonment on each of the charges, to be served concurrently.

[43] Please stand down.