

**IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY**

CRI 2006-019-5359

THE QUEEN

v

DEAN ANDREW DAVIDSON

Hearing: 26 June 2009

Counsel: R G Douch for Crown
M Robb for Accused

Sentence: 26 June 2009

SENTENCE OF RONALD YOUNG J

[1] Mr Davidson you are for sentence having been convicted by a jury on ten counts of sexual assaults involving two young girls. You were convicted on:

- a) one count of indecent assaulting a girl twelve to sixteen years of age;
- b) one of indecent assault of a girl under twelve;
- c) six counts of sexual violation; and
- d) two counts of doing an indecent act on a girl under twelve.

Seven of these counts were representative counts.

[2] A brief description of the facts is as follows. The complainant E B was born in January 1993 and offending against her commenced in 2005 when she was twelve. You befriended her mother. She was having personal difficulties and you gained access to the complainant and her younger brother by offering to care for them. On several weekends you looked after the complainant and her ten year old brother. They stayed with you in your room at the commercial hotel in Hamilton. The complainant's brother slept on a mattress and she slept in your bed.

[3] The complainant's mother of course was unaware of what was happening.

[4] On occasions when the complainant stayed with you, you touched her breasts with your hands, sucked her breasts, had her touch your penis, licked her genitalia, digitally penetrated her genitalia and made her perform oral sex on you.

[5] On one occasion you took the complainant and her little brother to Auckland where they stayed with you in a motel. Overnight you took the complainant into your room at the hotel and offended against her sexually by licking her genitals with your tongue, making her perform oral sex on you and digitally penetrating her genitalia.

[6] On occasions when you had the complainant perform oral sex on you, you would ejaculate into her mouth.

[7] The second complainant M L was born in March 1988. Counts ten to twelve on the indictment relate to her. Once again you befriended the mother of the complainant thus gaining access to her. You offered to assist the family in a number of ways including driving them to various places. In addition you would regularly visit the complainant's home and as a result you were allowed unsupervised access to her.

[8] The offending against M L occurred when she was six or seven years of age. You touched her genital area on the top of her clothes. This occurred on several occasions. On one occasion you drove her and her mother together with other children to the shops. While the mother and the other children were in the shops you

placed the complainant on your lap and took the opportunity to touch her genital area through her clothing.

[9] This was very serious invasive offending against young children. You were in a position of trust within both these families. You deceived these families into thinking you were helping them. In fact you were using them and their vulnerability to get access to young children of the family and to sexually abuse them.

[10] This was persistent, serious offending when you were a trusted family friend. It was planned and your careful plan put into place.

[11] You have a history of criminal offending beginning in 1982. Your sexual offending also began then when you were convicted of indecently assaulting a child under twelve. In 1988 you were convicted on four counts of indecently assaulting a young girl under twelve. Then in 1989 doing an indecent act and later that year peeping into a house, repeated in 1993. Then in 1994 you were convicted of unlawful sexual connection with a male under twelve. In 1999 indecent act with a male and later that year three charges of indecent acts with males. In 2003 you were convicted of possession of objectionable material.

[12] In addition over the years you have been convicted of a number of physical assaults on woman, the police and others, a total of seven overall.

[13] The probation report observes that you are forty-one years of age and that you have a long history of offending. The probation report records that you have previously undergone treatment for sexual offending, obviously without success. Worryingly you reject the guilty findings although you say you will still be motivated to accept treatment.

[14] I acknowledge that you had a very difficult childhood with violence and lack of a warm loving family at all.

[15] I also take into account those factors identified in your letter to me made available today.

[16] As far as victim impact is concerned with young children, even ones as old as fifteen years, it is very hard to accurately assess long term victim impact. It is difficult to know what the full effect of your offending will be on the emotional lives of these two young girls as they mature into adulthood. Currently, the older girl is estranged from her mother living with foster parents. She is angry and blames her mother. She is less trusting in regards boys, indeed regards males as untrustworthy and gross. As to the younger child currently there has been no noticeable effect on her personality. But what the future holds for her is difficult to know.

[17] The Crown case is that a sentence of preventive detention is appropriate. They point to a pattern of previous serious offending as established through this and other past offending. They identify the harm to society by your offending as high. They point to the psychiatric assessments as indicating high future risk of re-offending. They accept that while you have had rehabilitative programmes these in fact have been ineffective and the fact that you do not now accept responsibility for your current offending means rehabilitative sentences are unlikely to be successful.

[18] They say if a sentence of preventive detention is imposed then a minimum period of at least five years is appropriate.

[19] If a finite sentence is to be imposed then they say a starting sentence of ten years' imprisonment is appropriate.

[20] I have read Mr Robb's thorough submissions and I take those and of course his oral submissions as well as your letter into account. He says you do not have a pattern of serious sexual offending and stresses that although you do have a number of convictions for sexual matters they are essentially nuisance type offending rather than full invasive sexual offending. He points out that the offending is in the category of assaults rather than direct physical violations. He points to the fact that you have not had sentences of imprisonment relating to this previous sexual offending.

[21] As to future conduct and serious offending he says that you accept that there is some risk of future offending but stressed nothing in the past has been as serious as this offending. In addition he says that you have made considerable effort at rehabilitation and are now determined not to offend in the future.

[22] He says the fact that you were offending free from 1998 to 2005 is also relevant. He submits a finite sentence is appropriate because your previous history was not for serious offending. Programmes undertaken and programmes to be undertaken will substantially reduce the risk and there have been long gaps in offending. He says a finite starting sentence of seven to eight years is appropriate.

[23] You qualify for consideration of preventive detention because you are over eighteen years of age and you have committed qualifying offences.

[24] Before I can impose a sentence of preventive detention I must be satisfied you are likely to commit another qualifying sexual offence if you were to be released from a finite sentence taking account of course of the possibility of an extended supervision order.

[25] The relevant factors here are firstly whether there is a pattern of serious offending. As I have recounted you have a long history of offending against children. The previous sentences imposed on such offending have indicated the offending was not at the top of the range but there are a significant number of offences, all of a particular type, most involving, in one form or other, sexual assaults on young children. This current offending is of course the most serious that you have committed.

[26] I turn now to the two psychiatric reports. While they advise the Court that they cannot determine precise likelihood of future offending they both place you in the high risk category of re-offending. Both psychiatrists identify you as having a paedophilia disorder together with other personality disorders. Your offending both within and outside of families over many years against many children despite counselling and other therapy supports this assessment that you are high risk. The

evidence from the psychiatrists together with that long history of sexual offending all point, as I have said, to a high risk of likelihood of future serious sexual offending.

[27] I acknowledge your claim to be committed to treatment. However, given your denial of this offending and your previous obviously unsuccessful treatment, I cannot have any confidence that this is likely to lessen risk.

[28] As to a lengthy determinate sentence and the fact that this is preferable, if consistent with public safety, for the reasons I have identified you are in my view at serious risk of re-offending. You deny your guilt and, therefore, treatment based on this denial and your previously unsuccessful treatment means a finite sentence in the range of ten years (and I accept the Crown assessment as the appropriate starting point) even together with an extended supervision order is unlikely, in my view, to be sufficient to protect the public.

[29] I am satisfied, therefore, that all of the statutory criteria are made out for such a sentence. And I am satisfied in the circumstances that the protection of the public safety requires an indeterminate sentence of preventive detention.

[30] If as you say you are motivated to change and will change then that will no doubt be reflected in the Parole Board's assessment of you. But such a sentence in my view is properly required.

[31] On each of the charges, therefore, you are sentenced to a sentence of preventive detention. The Crown accepts that a minimum sentence of no more than five years in the circumstances is required. I therefore set the minimum sentence of imprisonment at five years but of course your release is dependent upon you convincing the Parole Board that you are no longer a threat to the safety of children.

Ronald Young J

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