PUBLICATION OF NAME OR IDENTIFYING PARTICULARS OF VICTIM PROHIBITED BY S 139 CRIMINAL JUSTICE ACT 1985

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CRI-2009-009-001410

REGINA

v

SHANE TERRY CHAPMAN

Hearing: 5 November 2009

Appearances: B Hawes for Crown
R D McGuire for Prisoner

Judgment: 5 November 2009

SENTENCE OF HON. JUSTICE FRENCH

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[1] Shane Terry Chapman, you appear for sentence this morning following pleas of guilty to five charges. Two charges of threatening to kill, for which the maximum penalty is seven years' imprisonment; one charge of unlawfully detention, the maximum penalty for which is 14 years' imprisonment; one count of injuring with intent, the maximum penalty for which is 14 years' imprisonment; and one count of attempted sexual violation by rape, the maximum penalty for which is ten years' imprisonment.

[2] This matter has been transferred from the District Court so that the possibility of preventive detention can be considered.

[3] Preventive detention is one of the most serious punishments that can be imposed. It is a term of imprisonment for an indefinite, or indeterminate time – that is to say, without any expiry date. A prisoner's release is entirely at the discretion of the parole board. Further, on release, a prisoner sentenced to preventive detention is subject to recall for life.

[4] The facts of your offending are as follows.

[5] All five counts arise out of a single incident that occurred in September last year and which involved the one victim.

[6] You and the victim had been in a relationship which had ended approximately four weeks prior to the offending. There had been a series of events building up to the end of the relationship. They involved you drinking, losing your job, a reconciliation, and then an ectopic pregnancy.

[7] On the night in question, you went to the victim's house to repay some money. According to the victim, the arrangement was that you would slip the cash underneath her door and leave. However, you woke her and went into the house. You lunged at her and said you were there to kill her, and that you were going to kill yourself, stating also that you wanted to have sex with her one last time. You then held her round the throat so that she temporarily lost consciousness. When she regained consciousness you took her into the bedroom, where you started trying to hold her and touch her genitalia. Twice you put your fingers inside her vagina, despite her constantly saying "No" and begging you to leave. You became angry and continued making threats. At one point you told the victim to call a close friend to come to the address so you could stab the friend in front of her. You also told her that if she phoned the police you would knock her out and go to the front of the property and get a gun to kill her and then yourself. To your knowledge the victim's seven year old daughter was in an adjoining bedroom. When you held the victim

down on the bed the victim screamed, and heard her daughter crying. The victim called out that Mummy was OK.

[8] The victim asked you to leave many times but you told her you would leave when you wanted to leave. You remained at the property for approximately six hours, throughout which time you locked and chained the front door and repeatedly told the victim she was not to leave and was to do what you said. She did not believe she was going to survive.

[9] When you did finally leave the address, you took a large serrated knife from a drawer in the victim's kitchen. You told her you were going to kill yourself. Police located you in close proximity to the address. However you only surrendered to them after a two-hour negotiation, during the course of which you threatened to kill yourself and also said you wanted them to shoot you.

[10] In explanation for your conduct you told police you could not get the money underneath the door, as arranged, and wanted to see the victim. Initially you denied having hurt her in any way.

[11] I have read the victim impact statement.

[12] The effects of what must have been an absolutely terrifying ordeal have been profound. The victim says she is scarred for life. She has recurring nightmares, is stressed, anxious and sick. She has even had to leave her own home, her health has suffered, she has difficulty relating to other people and she has been affected financially. Understandably, she is worried, too, about the impact on her little daughter who, a year later, is still nervy and fearful. The harm you have done is immense.

[13] In addition to the victim impact statement, I have also read the pre-sentence report and two medical reports, one from a psychologist (Ms Kingi) and one from a psychiatrist (Dr Evans).

[14] The reports tell me you are 30 years of age, and a man with a very troubled life history. It is said that you have exhibited signs of significant conduct and emotional disturbance from a young age, persisting throughout your childhood, adolescence, and into adulthood.

[15] Clinical features indicating this poor social adjustment have included extensive offending, drug and alcohol abuse, marked impulsivity, reckless disregard for the safety of others and yourself, volatile unstable relationships, breaches of Court orders, episodes of deliberate self-harm and suicidal behaviour, marked emotional instability and difficulty controlling your anger. You have previously been diagnosed as suffering from a severe personality disorder with antisocial and borderline traits, a diagnosis confirmed by Dr Evans.

[16] As regards your offending, most of this has taken place in Australia, where you lived from 1984 until 2007, when you were deported back to New Zealand. You have a significant number of convictions. They cover a broad range of offending, included violent offending, drug, dishonesty, property damage as well as a conviction relating to explosives. At age 17 you assaulted another teenager so badly he was hospitalised, and at age 18 you stabbed a police officer in the arm with a penknife.

[17] Of particular relevance to the present case is the offending against a previous partner in Australia. I have read the Australian Court records. You were convicted in 2001 of a crime described as "unlawful stalking". That offence involved a number of serious threats in the context of a relationship breakup, aggravated by a threat to use violence, possession of a weapon and contravention of a Court order. You were sentenced then to a term of imprisonment. Within a very short time of being released you armed yourself with a knife attached to a stick or pole of some kind, confronted a man whom you accused of having sexually abused you, and then went to your ex-partner's home as you wanted police to kill you. There then ensued an eight-hour siege.

[18] You were arrested and bailed. While on bail, you returned to the home of the same ex-partner, threatened her with a knife and held her down. There were children

present. You severed the tendon of her finger. Following that episode you were sentenced to another term of imprisonment.

[19] Since returning to New Zealand in 2007 there have been two driving offences, and one offence involving a firearm, but the penalties imposed were only fines.

[20] The current offending appears to be your first conviction for sexual offending.

[21] The writers of all three reports record that you have displayed some victim empathy and remorse. So too does the letter you have written to the Court, which I have also read.

[22] On the other hand, you are also reported as having stated that this offending was a "one-off" and as failing to see the strong parallels between what happened in Christchurch last year and what happened in Australia. This strongly suggests to me a lack of insight.

[23] I turn now to explain the sentencing decisions I must make.

[24] First and foremost I am required to apply the principles and purposes of the Sentencing Act 2002.

[25] In terms of the purposes of sentencing, there is a need to hold you accountable for the harm you have done, and to promote a sense of responsibility in you for that harm. I must provide for the interests of the victim, and on behalf of the community I must also denounce your conduct and reflect the need to deter you and others from committing similar offences. Importantly, there is also a requirement to protect the community from you – a highly relevant factor in this case.

[26] I also have to have regard to the principles of sentencing, for example the gravity of the offending and the degree of blameworthiness, bearing in mind the maximum penalties I referred to earlier. I must also take into account the desirability of consistency with other cases and, as emphasised to me in Mr McGuire's written

submissions, impose the least restrictive outcome that is appropriate in the circumstances.

[27] I turn first to consider the sentencing range which would be considered for a finite sentence, before discussing the issue of preventive detention.

[28] I take as the lead offence the detaining charge, and identify the following aggravating features:

i) the fact that the offending involved actual violence as well as threats of violence;

ii) the effect on the victim which, as I have said, has been profound;

iii) the fact the offending occurred in a home with a child present;

iv) the length of the detention.

[29] In its submission, the Crown identified a degree of pre-meditation as a further aggravating factor. That is disputed by you, and in the absence of a contested facts hearing I have decided I will not take that into account. However, it has not made any difference to my ultimate view.

[30] Having regard to the aggravating factors which I have identified, and comparator cases, I consider a starting point of ten years' imprisonment is warranted.

[31] In terms of factors relating to you personally, there is the aggravating factor of your previous conviction. I consider on account of that, an uplift of two years is justified.

[32] The only mitigating feature is your guilty plea, which was entered after depositions, but which has saved this victim the ordeal of having to give evidence in person. On account of that, you are entitled to a discount of 20%.

[33] Mr McGuire submitted there was a second mitigating factor, namely that of remorse. However it is clear for the Court of Appeal decision of *R v Hessell* [2009] NZCA 450 that the discount for the guilty plea is intended to take remorse into account unless the remorse is of an exceptional nature. I do not consider that your remorse can fairly be described as exceptional.

[34] Therefore, the sort of finite sentence I would be contemplating would be a sentence of nine and a half years.

[35] The key issue I have to decide today is whether or not it is appropriate to impose a sentence of preventive detention upon you to protect the public, or whether a finite sentence will suffice, as strongly advocated by Mr McGuire.

[36] The purpose of preventive detention is to protect the community from those who pose a significant and ongoing risk to the safety of its members. It may only be imposed if three conditions, set out in s 87(2) of the Sentencing Act, are satisfied. They are:

> (a) a person is convicted of a qualifying sexual or violent offence…

It is common ground that that requirement is satisfied in your case.

> (b) the person was 18 years of age or over at the time of committing the offence

That requirement is also clearly satisfied in your case.

> (c) the court is satisfied that the person is likely to commit another qualifying sexual or violent offence if the person is released at the sentence expiry date [of a finite sentence]

The Crown submit that a sentence of preventive detention is a proportionate response to your offending as seen against a background of your previous convictions, and is required to protect the community. It is submitted that a finite sentence will leave open the undesirable possibility that you may be released at the end of the sentence while still a significant risk. Preventive detention however, it is said, will ensure that you will not be released until the risk of your reoffending has been adequately addressed.

[37] The Sentencing Act further requires me, when considering whether to impose a sentence of preventive detention, to take into account five matters. I will turn to consider each of those five matters.

1. Pattern of serious offending

[38] As I have noted, you have an extensive criminal history, which includes numerous violent offences against a range of victims. The current offending has marked similarities with offending in 2000 and 2002 against your Australian partner, including a background of controlling and possessive behaviour, relationship instability, keeping a partner captive, threatening self-harm, use of a knife, threats to others and then a stand off with the police. Dr Evans says there is a clear pattern of threatening and violent behaviour, underpinned by non-psychotic feelings of suspiciousness, resentment and anger.

2. Seriousness of the harm caused to the community

[39] Undoubtedly, your partner in Australia, and your victim in Christchurch, have suffered significant psychological harm. Their children have also been affected. As further noted in Dr Evans's report, your offending behaviours have involved police sieges which extends the impact of your offending to the local community.

3. Information indicating a tendency to commit serious offences in the future

[40] All of the reports consider you at high risk of reoffending. Ms Kingi's report stated:

> Mr Chapman is highly likely to re-offend in a similar manner should he enter another intimate relationship. He is most likely to respond in a violent manner, with or without the use of a weapon as the relationship deteriorates. His risk of acting in a violent manner is exacerbated by his abuse of substances. His risk of sexual violence is most likely to occur in this context.

[41] Dr Evans' report says:

> A psychiatric assessment in 2000 emphasised the disorganised and impulsive manner of his offending and the associated very high risk of reoffending, and the risk of violence within an unstable relationship. In my clinical view, the contextual risk of the defendant being violent if he were in the community remains high in the absence of long-term clinical interventions.

[42] In his submission, Mr McGuire has made the point that there are a relatively narrow set of risk factors, and accordingly that would better enable the authorities to fashion appropriate release conditions targeting the risk factors. That is certainly a consideration I have taken into account.

4. The absence of, or failure of, efforts by the offender to address the cause(s) of offending

[43] Of concern under this head are indications that you lack insight into your offending and appear to minimise it. As I have mentioned, you stated to one of the report writers that you consider this offending was a one-off and that there were only small comparisons between this offending and the Australian offending. Of concern to me too is your negative and unco-operative behaviour when you were admitted to Hillmorton Hospital.

[44] On the other hand, I do accept it would be unfair to characterise you as a treatment failure. You have not undergone treatment for your violent offending, or had the opportunity to address the sexual offending.

[45] You are reported as having said you are motivated to undergo treatment, and you are currently attending and engaging in individual psychology sessions.

[46] In my view the position is probably best summarised by Dr Evans in his report:

> … there is mixed evidence in terms of the defendant's willingness and capacity to undertake relevant clinical interventions, which could possibly modify his future risk of violence. Negative prognostic factors include his self-reported longstanding dislike for psychological or psychiatric approaches, the generally negative attitude [he] exhibited during his admission to Hillmorton Hospital in 2007, and the severity of his personality disturbance. To balance against this, he has shown some improved, albeit still inconsistent, engagement with psychological and psychiatric work in the prison setting and he currently reports a very strong and positive attitude

> towards engagement with psychological work as a sentenced prisoner. In my view he requires a series of sustained (over several years) clinical interventions including the following components:
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> a. ongoing treatment with, and supervision of, his current medication;
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> b. individual psychological work to address his emotional instability and issues related to the impact of early trauma and relationship instability;
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> c. group psychological work directed towards violence reduction, which would include his tendency to deny or minimise aspects of his offending;
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> d. group psychological work directed towards his substance dependency; and
>
> e. broader occupational training, directed towards establishing realistic work opportunities which would take place in a non-confrontational setting without ready access to alcohol or drugs (as opposed to his recent work as a bouncer).

5. The principle that a lengthy, determinate sentence should be imposed if it provides adequate protection for society

[47] Mr Chapman, I have found this an extremely difficult decision to make. But in the end, by a narrow margin, I have decided not to impose preventive detention. The factor that has weighed with me most in coming to that decision is the fact that you have not previously undergone the sort of treatment identified by Dr Evans as being necessary to contain the risk.

[48] Even although preventive detention is not a sentence of last resort, it seems to me that before such a severe sentence as preventive detention is imposed, you need to be given that opportunity. You know what the result will be if there ever is a next time.

[49] I therefore sentence you to a term of imprisonment of nine and a half years. In my view it is necessary in order to protect the public to impose a minimum period of imprisonment under s 86 of the Sentencing Act, and that it should be two-thirds. I therefore impose a minimum term of imprisonment of six years, two months.

[50] On the charge of unlawful detaining you are convicted and sentenced to a term of imprisonment of nine and a half years. On the count of injuring with intent you are sentenced to a term of imprisonment of three years, to be concurrent with the nine and a half year term. On each of the two charges of threatening to kill you are convicted and sentenced to a term of imprisonment of three years, concurrent. On the count of attempted sexual violation you are convicted and sentenced to a term of imprisonment of four years, concurrent.

[51] All of these terms are concurrent, which means the total effective sentence is nine and a half years' imprisonment.

[52] I impose a minimum term of imprisonment – which is the minimum non-parole period – of six years, two months.

[53] Finally, I make an order suppressing the name and all identifying particulars of the victim.

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