

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

**CRI-2009-091-2047**

**THE QUEEN**

v

**TANGIMETUA NGARIMA (AKA TERRY TOMOKINO)**

Charges: 

1. Representative count of sexual violation by rape
2. Representative count of sexual violation by unlawful sexual connection
3. Sexual violation by rape

Plea: Guilty

Counsel: M A O'Donoghue for Crown  
C J Tennet for accused

Sentence: 17 December 2009

1. Eight years imprisonment
2. Eight years imprisonment
3. Eight years imprisonment  
To be served concurrently

Four years minimum term of imprisonment

---

**SENTENCING NOTES OF MACKENZIE J**

---

[1] Tangimetua Ngarima you appear for sentence on one representative count of sexual violation by rape, one representative count of sexual violation by unlawful sexual connection and one further count of sexual violation by rape.

[2] The offending in respect of the first two counts occurred between April 1992 and April 1993. You were then living at a relative's house. The first complainant was a relative aged 10 at the time who resided in a house in the same street. She would visit the house at which you were living. The offending began when you invited the girl to go for a walk to the shop with you. You took her to a secluded area and made her perform oral sex on you until you ejaculated into her mouth. This type of conduct recurred on subsequent occasions where you would take the child for a walk to a secluded area, undress yourself and her and make her perform oral sex on you until you obtained an erection. You would then have sexual intercourse with her until the point of ejaculation when you would withdraw and ejaculate over her body. You would then clean up the semen with your clothing. These events occurred regularly about once a week or fortnight over the period. On other occasions you would visit the girl at her home when she was alone and rape her.

[3] The offending in respect of the third count occurred over the period August to December 2000. The victim of that offending was another relative who was aged six at the time. It involved a single incident when you were visiting her home while intoxicated. You went to her room where she was sleeping, removed her clothing and began to rub your penis against her genitalia, to the point where penetration occurred. She awoke and you continued to rub against her until you ejaculated over her. You cleaned up the semen with your clothing and checked to see that she was not bleeding before leaving the room.

[4] You are 49 years of age and of Cook Island origin. You have been in New Zealand since 1979. You are married and that relationship commenced in about 1992. Your wife stands by you and is willing to provide support for you though she is not suspected of condoning or colluding in your offending. You have three children and also care for your wife's 21 year old disabled nephew. You received limited schooling. You have no relationship with your father and were brought up by your mother and after your teenage years by your grandparents before moving to New Zealand at age 18. You have limited schooling. You were introduced to alcohol at age 14 and have become a heavy drinker. You have been employed in a number of unskilled positions.

[5] You pleaded guilty to the offending at a very early stage. Sentencing was scheduled in the District Court but the learned District Court Judge declined jurisdiction on the basis that consideration may need to be given to the imposition of a sentence of preventive detention. The Crown does seek such a sentence and your counsel opposes that. It is appropriate to structure these sentencing remarks by reference to the matters requiring consideration in relation to the imposition of such a sentence. This offending occurred at a time when the law in its previous state applied but it is convenient to follow the structure of the section as it currently stands in considering the relevant issues.

[6] 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. The sentence is one which is available in your case. You must be advised that a sentence of preventive detention will be considered and the Court must have obtained and considered reports from at least two appropriate health assessors about the likelihood of your committing further serious offending. All of that has been done here. In considering whether to impose the sentence the Court must take into account :

- a) Any pattern of serious offending disclosed by your history;
- b) The seriousness of the harm to the community caused by your offending;
- c) Information indicating a tendency to commit serious offences in future;
- d) The absence of, or failure of, efforts by you to address the cause or causes of the offending; and
- e) The principle that a lengthy determinate sentence is preferable if this provides adequate protection for society.

[7] The first matter is any pattern of serious offending disclosed by your history. Of concern in this respect is offending of a similar nature to this which was before

the Court in 1989 (under the name of Terry Tomokino). You pleaded guilty to two charges of attempted unlawful sexual intercourse with a girl under 12 years and one charge of indecent assault of a girl under 12. The girl was in fact aged seven at the time. You boarded with her family and on occasion the children were left in your care. As a result of the offences the girl contracted a sexually transmitted disease. You were sentenced to three years and nine months imprisonment. The offending in the case of the first complainant here must have occurred very soon after your release from prison on that sentence. The offending in respect of the second victim occurred seven or eight years later. Those three occasions are not as numerous as is often encountered in cases where preventive detention is sought. The offending however is very serious and in the case of the first victim was prolonged. It involves young girls in respect of whom you are to some extent at least in a position of some trust and in each case the acts involved have been at the most serious end of the spectrum.

[8] The next matter is the seriousness of the harm to the community caused by the offending. Offending such as yours is extremely harmful and the seriousness of the harm to the community is towards the upper end of the scale. The harm to your victims shows clearly in their victim impact statements.

[9] The next matter is information indicating a tendency to commit serious offences in the future. That is the most critical aspect in your case. The probation report assesses the factors contributing to your offending as offence related sexual arousal, willingness to use violence and coercion, and offence supportive attitude and entitlement. The report refers to relationship difficulties with your wife, lacking lifestyle balance and for the second victim use of alcohol leading up to the offending. As to the relationship difficulties I have noted already that your wife stands by you. The report writer says that you must be assessed at high risk of sexual reoffending if you remain untreated and in the community. The report writer notes the need for a more in depth assessment while you are in prison and that risk reduction will need to remain the focus both in prison and when released.

[10] The report from the psychologist notes that there has been no previous treatment aimed towards addressing your offending behaviour but that you had

approached Wellstop for help with the best way to deal with your sexual offending. You were noted as suitable for the Wellstop treatment programme. That could not proceed in your present situation. The psychologist noted an unwillingness to discuss the details of your sexual offending and found it difficult to obtain an explanation of the offending. The heavy use of alcohol is noted as a factor, as is your disjointed childhood in which you had no real role models or guidance to develop an understanding of normal and appropriate relationships. She noted you as displaying remorse for your actions and an inability to identify the impact of your behaviour on your victim and others. She noted you as motivated to address your offending and to participate in a treatment programme. On the measures used to assess your risk of offending, you were found to be in the medium or low risk categories on all tests. The psychologist's opinion is that you present with a moderate to low risk of serious sexual reoffending. The risk being most prominently to pre-pubescent adolescent females known to you and the risk of reoffending is likely to rise rapidly in the context of alcohol abuse. I note that you have been undertaking treatment in respect of your alcohol problem.

[11] The psychiatrist prefaces his opinion by noting the ethical problems for a health assessor of reports of this sort. The risk to be assessed is one which requires a judgment to be made as at a number of years in the future when there may be factors in the meantime which will modify the risk. The second is the difficulty in making a risk assessment to be used for punitive rather than therapeutic purposes. There is indeed a difficulty in ensuring that the effort which goes into assessing the risk of offenders in your situation is applied, as it should be, to determining appropriate treatment. The helpful material in such reports, with a therapeutic focus cannot readily be converted, in a way in which the Court has any significant control, into participation in a treatment programme. All of the reports in your case suggest to me that treatment will be critical in reducing the risk of reoffending. They also persuade me that you may be potentially receptive to treatment, both in relation to alcohol and sexual offending, in a way which may reduce the risk significantly. These are matters which should receive close attention from the prison authorities in your case.

[12] The next factor is the absence of, or failure of efforts, to address the causes of your offending. You have had no treatment for sexual offending. As your counsel

points out, you were not well placed to get any treatment. You did take the initiative to appropriate Wellstop. I do not regard the absence of efforts to address your offending as indicating an unwillingness to participate in such treatment. It cannot be said that any treatments which you have undertaken have failed to work. Counsel for the Crown acknowledges that your risk can be addressed by treatment, but submits that the prospects are curtailed by an unwillingness on your part to face up to your offending. I do not take such a pessimistic view.

[13] The final matter is the principle that a lengthy determinate sentence is preferable if this provides adequate protection for society. A finite term would necessarily be a lengthy one. You are 49 years of age and will be considerably older before you are released. I consider that the prospects of successful treatment in the course of a lengthy finite sentence are sufficiently great that the imposition of a finite term will provide adequate protection. There will be means available, on your release, to address the risk in more specific ways so as to minimise the risk of contact with the category of victims identified as most at risk, if treatment is not successful.

[14] For these reasons I have reached the conclusion that a term of preventive detention should not be imposed.

[15] I must therefore consider the appropriate finite sentence. The charges are all of an approximately equal level of seriousness. I propose to treat as the lead charge the most recent offending, against the second victim. It was a single incident. It was against a very young victim. Being the most recent it is easier to correlate to the sentencing levels of the time. It is well established that the starting point before aggravating and mitigating features for a single contested rape by an adult is eight years imprisonment. That is clear from the decision of the Court of Appeal in the case of *R v A* (1994) 2 NZLR 129 (CA). In this case there are a number of aggravating features. The starting point needs to be increased to reflect the earlier offending. Both sets of offending involved the abuse of a position in the nature of trust and authority. The victims were especially vulnerable due to age. The harm to the victims has been great as their victim impact statements show. The offending in respect of the first victim was pre-meditated and repetitive.

[16] These factors require an increase in the starting point of eight years applicable for a single rape. Counsel for the Crown submits that the appropriate total starting point should be in the range of 12 to 13 years imprisonment with perhaps some uplift on that. Your counsel submits that a starting point of 10 to 11 years would be appropriate. I adopt a starting point of 12 years.

[17] To that there must be made an adjustment for personal aggravating and mitigating factors. I find no personal aggravating factors. The only personal mitigating factor which I see as justifying a reduction is your guilty plea. That guilty plea involves an acknowledgement of your wrongdoing and an expression of remorse which will be adequately reflected in the discount for the guilty plea and do not require separate additional recognition. The plea came at an early stage and entitles you to a discount of one third. That leaves an end sentence of eight years which is the sentence which I impose.

[18] I must also consider whether there should be a minimum period of imprisonment. I consider that the seriousness of the offending does justify the imposition of a period for the purposes of holding you accountable, denunciation, deterrence and the protection of the community. I bear in mind as your counsel has submitted that the test is that which previously applied and I apply that test. I have held that the protection of the community does not require preventive detention. It does however require, on my assessment, a minimum period of imprisonment which I would fix at four years.

[19] The sentences accordingly are that on each of the charges you are sentenced to a term of eight years. Those terms are to be served concurrently. You must serve a minimum term of four years.

**“A D MacKenzie J”**

Solicitors: Crown Solicitor, Wellington for Crown  
C J Tennet, Barrister, Wellington for accused