

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

CRI 2009-009-000451

REGINA

v

GRAHAM TAUWHARE CAMERON

Hearing: 16 December 2009

Counsel: A R McRae for Crown
Q Hix for Prisoner

Judgment: 16 December 2009

SENTENCING REMARKS OF FOGARTY J

[1] Mr Cameron you are 59 years old. On 11 November last you pleaded guilty to a charge of sexual violation by digital penetration of the complainant's vagina. This was before the District Court at Timaru before Judge Noble.

[2] This offence arose out of a casual acquaintance you had with a woman in her 30s. You and others had been drinking. She gave you permission to park your car in her driveway so that you could sleep in it. Later, without authority, you entered the house where the complainant and her cousin had fallen asleep. This was contrary to the understanding that you had with the woman and she awoke to find you kneeling beside her with your finger in her vagina. She moved away and you re-inserted your finger which you then extracted and left.

[3] The Judge declined to sentence you in the District Court because of your previous convictions. You had some 24, going back a long way to 1970, including a number for sexual offending and a number which involved loitering near buildings and being found in enclosed premises, and are likely to have been motivated by possible opportunity to see people in intimate situations, in other words “peeping Tom” type offending.

[4] As a result of this offending history, even though it has been 15 years since your last offending, the District Court Judge, having read the probation officer’s report, the psychiatrist’s report, and the psychologist’s report, concluded there were sufficient concerns for public safety to decline jurisdiction and send you to the High Court.

[5] The purpose of a sentence of preventive detention is to protect the community from those who pose significant and ongoing risk to the safety of its members. It is more commonly applied to persons who have sexual urges or other compulsive behaviour which they show over a period of time that they cannot control.

[6] The Court when considering whether or not to impose this sentence must take into account a number of factors. The first: is a pattern of serious offending disclosed? Although this conviction is the latest for some 15 years the reports of the psychologist and the psychiatrist and the history of offences themselves tend to show that you offend when your normal stable sexual relationships have broken down or have been suspended, such as when your partner went back to the North Island for a while to look after her family. In other words, you have difficulty coping on your own without a regular sexual partner and coupled with that your ability to control yourself is severely diminished when you take alcohol.

[7] So, I am satisfied that there is a pattern of offending which is serious in the sense it is of risk to the safety of the public, strangers, and persons who are slightly less than strangers, being sexually interfered with by you. Because of the nature of the offending this kind of non-consensual sexual intimacy has always been regarded as extremely serious to the community, for obvious reasons.

[8] The third criteria is information concerning a tendency to commit serious offences in the future. I have before me two reports, a report by Dr Earthrowl, a Consultant Forensic Psychiatrist, who is an expert in this area. He concludes, after the usual thorough report, that you are in a high risk of re-offending, with the qualification that that is a statistical finding and does not necessarily mean that you as an individual would actually re-offend. Dr Earthrowl says that a prediction of this nature is inherently unreliable. He points out that there is always a risk of any sexual offender re-offending, and that is something I have to take into account. Section 87 of the Sentencing Act 2002 is not saying to a Judge that where there is any risk of re-offending a sentence of preventive detention has to be imposed. If that was the law then all sexual offenders would get preventive detention.

[9] Dr Earthrowl concludes his report with some very helpful remarks to you. Having reviewed the way in which you offend, which I have mentioned, he says:

... All of these areas are potentially amenable to improvement with treatment and it appears that Mr Cameron has had no formal treatment historically aimed at these issues. Mr Cameron is willing to undergo treatment aimed at addressing these issues and in my clinical opinion successful intervention in all or some of the above areas are likely to have a significant impact in reducing his risk of reoffending in the future.

[10] The report from the psychologist, Dr Kingi, was, however, not as positive. Like Dr Earthrowl, using her different techniques as a Clinical Psychologist, she also came to the same conclusion, that you are at significant risk of re-offending. She also records that you have not undergone treatment for your sexual offending. She also records, however, that you have been offered intervention by Mental Health Services for your alcohol abuse which is a significant contributor to your sexual offending, but you failed to take advantage of this opportunity. She says that you are motivated to undergo treatment but you are quite unclear as to why you need to address your sexual offending.

[11] That is a difficulty, in my mind, because you are only likely to be successfully treated Mr Cameron if you accept you have a problem which you need to address.

[12] I am left with the conclusion that unless you fully acknowledge that you have a problem, and, secondly, undergo appropriate treatment, then the information before me does indicate a tendency on your part to commit serious offences in the future, even taking into account you are now about to go into your 60s.

[13] The next criteria I have to consider is the absence or failure of efforts to address the cause. I have partly touched on that. I think over a period, the fact you have these previous convictions, had you been motivated to change, you have had an opportunity over many years to address the cause of your offending and have not done so. I finally arrive at the principle that I must take into account that a lengthy determinate sentence is preferable because this provides adequate protection for society.

[14] Before I had the benefit of oral argument today, I did come into this Court thinking that a sentence of four and a half years, which is the top end of the sentence sought by the Crown as the determinate sentence, would be preferable, thinking in my mind that there would be no doubt that you would get appropriate treatment before release. But in the light of the information that I have received today in the course of oral argument, I am now left with a significant doubt as to whether or not a lengthy determinate sentence would provide the appropriate environment and incentivise you to facing up to your problem and getting and taking treatment to significantly reduce the risk to society.

[15] For these reasons, Mr Cameron, I have decided that my duty is to impose a sentence of preventive detention on you which I do so for the minimum period of five years.

[Judge queries whether there are any other issues that need to be addressed. Counsel indicate there are not.]

Solicitors:
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