

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

**CRI-2008-044-005475**

**THE QUEEN**

v

**GARETH COOK**

Appearances: L S MacDonald for Crown  
D P Hoskin for Prisoner

Judgment: 30 October 2009 at 2:15 pm

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**SENTENCING NOTES OF COURTNEY J**

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Counsel: *D P Hoskin, P O Box 301035, Albany, North Shore City 0752*  
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[1] Gareth Cook, you appear today for sentence having pleaded guilty to one count of sexual violation by unlawful sexual connection, the maximum penalty for which is 20 years imprisonment. You entered your plea in the District Court but that Court has remitted the matter here for sentence specifically so that a sentence of preventive detention could be considered. Although this is very serious offending and arguably you meet the criteria for a sentence of preventive detention, the Crown does not actively seek such a sentence. After very careful consideration I have also reached the view that preventive detention would not be appropriate in this instance.

[2] Before I consider the sentence that is to be imposed I will spend a moment talking about the circumstances of the offending. This case involves the sexual violation of a five-year-old girl. On the afternoon of 24 July 2008 you were at the Whangaparaoa branch of The Warehouse. The five-year-old girl was looking at toys with her mother looking at clothes nearby. You approached the child, crouched down behind her, reached up inside her clothing and touched her bottom. You fondled her and then inserted your finger inside her vagina. Subsequent medical examination disclosed that this had caused a 5 millimetre long laceration and bruising. The child screamed. She immediately told her mother what had happened and her mother confronted you but you denied doing anything and left the shop. Despite changing your clothes and leaving your own clothes in a rubbish bin nearby apprehended soon afterwards. When interviewed later that day you made admissions about the offending and acknowledged that you had a problem with your behaviour.

[3] As is to be expected your offending has had a considerable impact on the child and her family. Although the injury to the little girl was not a serious one and will heal fully, the fact is you caused real pain and actual injury to a five-year-old child. That child is now showing signs of changes in her behaviour. She is more conscious of men when she goes out. She wants to know if other people know what has happened. She asks if you are still in jail. Her mother feels guilty and shameful about what has happened and the incident has caused friction between her and her husband.

[4] I turn now to your personal circumstances. You are 30 years old now. Although you have had previous relationships you are currently not in a relationship and you do not have children. You have reported a dysfunctional and transient upbringing, with feelings of being excluded from your family. You have half-siblings and although you seem to have had some father figures in your life while you were growing up, they were not long term and you have no contact with your biological father. You have been using cannabis regularly since you were a teenager and have previously reported feeling depressed. The psychiatric report actually refers to the likelihood of you having had periods of clinical depression in the past.

[5] You have three previous convictions. One is a historical breath alcohol conviction which is not relevant for today's purposes, but you have two previous convictions for sexual offending. In 2006 you were convicted of offensive behaviour. Clinical notes suggest that, notwithstanding your innocent explanation, this offending was in the nature of peeping at young girls in the shower. In 2007, you were convicted of doing an indecent act, this being masturbating in the public library. It is, of course, the current conviction that follows on from these two previous offences that has resulted in you being eligible for preventive detention.

[6] Although I have already indicated that I do not intend to impose a sentence of preventive detention I do briefly review the factors relevant to consideration of such a sentence. I note that although the Crown has not sought that sentence, it does indicate that it would do so in the event of any future sexual offending by you. Assessment by the Community Probation and Psychological Services refer to your adolescent sexual experiences and use of marijuana as establishing a pattern for your future conduct. You have developed dysfunctional beliefs that sexual activity with children is harmless. You have been assessed as being at medium-high risk of re-offending.

[7] In terms of a pattern of serious offending, the psychiatric report refers to a pattern of sexual preoccupation that has led to your sex offending with an arguable pattern of escalation from offensive behaviour to an indecent act to the current unlawful sexual violation charge. Dr Duff, the psychiatrist, notes your previous

acknowledgement of deviant interests and attitudes to the effect that sexual abuse of children does not cause them harm.

[8] It is significant that from the outset you have recognised that you have a serious problem and do need help. At one stage in the past you have, in fact, sought help yourself. You have been referred to community mental health services from time to time. But you do not ever appear to have actually undertaken any treatment long-term or with any success. Dr Duff assesses you as falling within a group of offenders with moderate to high level of risk of future offending. She concludes that a lengthy sentence in the absence of specific rehabilitation therapy is unlikely to lessen the risk that you pose of future offending. She considers you have clearly identified risk issues in relation to your attitudes and beliefs, coping skills, emotional regulation, impulse control, problem solving skills and all of these require therapy to minimise the risk of future offending.

[9] Based on these reports, I must say that I am deeply concerned that you will re-offend. On the other hand, you have taken responsibility for your offending by offering a guilty plea and acknowledging your need for help in this area. I note further that your mother, with whom you seem to have had a variable relationship in your childhood, does support you now. I am also conscious that, although I think there is a pattern in your offending and it is a disturbing one, the two previous convictions are certainly at the lower end of the spectrum in terms of sexual offending. It is for all of those reasons that I have reached the view that this case is best dealt with by a determinate sentence of imprisonment coupled with treatment during that term of imprisonment.

[10] I therefore turn to consider what an appropriate sentence might be in this case. The object of sentencing in a case like this is to hold you accountable for the harm that you have done to the victim and the community, promote a sense of responsibility in you for that harm, protection of the community and if possible to assist in your rehabilitation. In achieving these objects I take account of the seriousness of the offending, the desirability of consistency in sentencing in this case compared with others and the effect of the offending.

[11] I have previously described the offending in some detail and the effect of it on the child and her family. This offending has several aggravating features; the age of the victim, her vulnerability. It cannot be denied that it is serious offending. Sexual violation of a very young child undertaken brazenly in a public place. There was actual pain and injury and although there was no permanent damage, I regard it as an aggravating feature. It was, of course, highly likely that you would be noticed and confronted in that public place and when you were confronted made your escape in what the psychiatrist described as a relatively cunning and efficient manner. Whilst there is an element of opportunism in this offending and it would generally be described as opportunistic, it must have been obvious that you approached this little girl knowing that her mother was not beside her. There was an element of forward planning in this offending and the fact that it was over within a short time or that you took advantage of the situation as it presented itself is in no way a mitigating factor.

[12] In reaching a starting point for determining an appropriate sentence I have had regard to a number of the cases that both the Crown counsel and your lawyer have referred to me.<sup>1</sup> Based on those and my assessment of the circumstances I conclude that a starting point of four-and-a-half years should be taken, with an increase to reflect your previous offending. I therefore come to a sentence of five years imprisonment from which you are entitled to a discount to reflect your guilty plea. Notwithstanding your earlier admissions, you did not enter that plea until after you were committed for trial. I do note that you have expressed remorse very sincerely in letters to the Court and in letters to the child's family. I accept it is remorse sincerely given. On the current guidelines from the Court of Appeal<sup>2</sup>, taking into account the guilty plea and the obvious remorse, you would be entitled to a 20% reduction which would result in a final sentence of four years imprisonment.

[13] Now the Crown seeks a minimum period of imprisonment in this case, which I have the power to impose if I consider that the period that would otherwise be served under the Parole Act 2002 (namely one-third of the sentence) would be

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<sup>1</sup> *R v Tranter* CA486/03 CA36/04 14 June 2004 O'Regan, Wild and Doogue JJ; *R v McKenzie* [2007] NZCA 72; *R v Pori* HC AK CRI-2006-004-007121 8 December 2006

<sup>2</sup> *R v Hessel*

insufficient to hold you accountable for the harm done or to denounce your conduct or to deter you and others from such offending or to protect the community.

[14] All of these factors are of great concern to me in this case and given my deep concern about the contents of the psychiatric report I consider that the protection of the community in particular means that the period that would otherwise be served would certainly be insufficient in this case. One significant reason for this is your need for treatment to address the causes of your offending and this not likely to be completed if I impose a term that will be a short term of imprisonment. Counsel has, for example, advised me that one of the courses available in prison – the Te Piriti course – requires a minimum of two years to complete and currently there is no guarantee as to when you would be able or eligible to enter that course.

[15] I therefore require you to serve a minimum of three years in prison and I direct that you be assessed as soon as possible for acceptance into the Te Piriti programme and also into a drug rehabilitation programme. I also direct that consideration be given to an application for an extended supervision order upon completion of your sentence. Stand down.

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P Courtney J

### **Addendum**

Since imposing this sentence it has been drawn to my attention that the minimum three-year term of imprisonment exceeds the limit of two-thirds of the sentence I am permitted to impose. I accordingly reduce the minimum term of imprisonment imposed from three years to two years seven months.