IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY

CRI 2009-476-000024

RANGI RICHARD KING
Appellant

v

POLICE
Respondent

Hearing: 15 December 2009

Counsel: M J de Buyzer for Appellant
A-M McRae for Respondent

Judgment: 15 December 2009

JUDGMENT OF FOGARTY J

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[1] This is an appeal against a sentence imposed on the appellant in respect of a sexual connection charge which was one of four offences upon which he was sentenced by Judge S J O'Driscoll in the District Court at Oamaru on 16 September last.

[2] The sexual connection charge was one of having sexual connection with a young person aged between 12 and 16. She was a 14 year old girl. The appellant knew her because he had been invited by her family to live at their home address as he had nowhere else to go. He had been living there for a number of weeks.

[3] On 28 February last he and the girl went to a party in another property at Palmerston. They had both consumed alcohol. During the evening the girl and the

appellant had sexual intercourse on a bed in a sleepout at that property. There is no dispute that the intercourse was consensual.

[4] The Judge discussed two authorities to guide him as to the sentence to impose. One was *R v Jones* CA153/90 20 July 1990, which was decided before Parliament had amended the law in 2005 increasing the levels of sentences that can be imposed and thus signalling that Parliament regarded this type of offending to be given greater sentences. The Judge also considered *R v H* [2008] NZCA 237, another decision of the Court of Appeal. That was a decision in 2008. Although the Judge had the more recent case of *R v Burdett* [2009] NZCA 366 before him he did not, or certainly not in his reasoning, consider that case which was decided on 19 August 2009.

[5] In both the case of *H* and in the case of *Burdett* the offending was by a much older man. In the case of *H* it was by a man of 53 years of age, and the complainant was 15. In the case of *Burdett* it was by a man of 44 years of age. In both cases there were elements of grooming. This was particularly so in the case of *Burdett*, before the offending. In the case of *H* the man had been told by the girl's parents of her age, the girl having initially lied about her age, but the offending then continued after that for a period of some months. In the case of *Burdett*, which was more one of grooming, there was one act, the older man then asked the girl not to talk about it. In *Burdett* the Court of Appeal emphasised that by the 2005 reforms, Parliament has recognised not only the gravity of premature exposure to sexual intercourse, but the gravity of the seduction that precedes it.

[6] To my mind, these two cases of *H* and *Burdett* are much more serious than this case where the appellant was 21 years old. There was no evidence of prior grooming. It appears to have been an opportunistic case of sexual intercourse, opportunistic on both sides, the boy and the girl, both of whom have consumed alcohol, and both who were away from the home at a party.

[7] The Judge emphasised the element of breach of trust. There is an element of breach of trust here. But it is not a case where the young man took advantage of the fact that he was also living on the property to have sex on the same property, or there

was no indication that he intended to take advantage of this young girl, which often occurs in breach of trust situations.

[8] The Judge took a lower starting point from *H* and from *Burdett*. In those cases it was three and a half years. Here the Judge took a starting point of three years. The question before me really is whether this is a sufficient distinction between those cases.

[9] The Court will only interfere against a sentencing decision when the Court is satisfied that it is manifestly too high. That in itself is an exercise of judgment. In this case I think the facts are of a lesser severity than the cases of these two older men essentially taking advantage of very young girls. The distinction should be more than six months. I think the appropriate starting point in this case should be two and a half years.

[10] I wish to make it clear that I do not do that following the case of *R v Stacey* [2008] NZCA 465, which I regard as quite different on its facts, and as noted by the Court of Appeal, the starting point could be higher. I am making a decision relative to the levels of sentencing in *H* and *Burdett*. A point of difference between my analysis and that of Judge O'Driscoll is that I think the more recent case of *Burdett*, decided only a couple of months ago, is the best guide at the present time, pending an awaited decision from the Court of Appeal in the case *R v M* (CA27/2009).

[11] For these reasons I think that the starting point should have been two and a half years. There is no dispute that the appropriate discount should be one-third. That would have reduced that sentence of two years to one year eight months. Accordingly, the overall sentence which was for two years five months should be reduced by four months to two years one month. To that extent this appeal is allowed.

Solicitors:
Berry & Co, Timaru, for Appellant
Crown Solicitor, Timaru, for Respondent