IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

S. 71/90

R E G I N A

v

IVAN BRUCE PARKER

Sentence: 24 August 1990

Counsel: P Hamlin for Crown
P Dacre for Accused

SENTENCE IMPOSED BY CHILWELL J

Mr Parker, you have been sent to this Court for sentence having pleaded guilty to six sexual offences involving young boys to whom I will refer as A, B and C. They were aged respectively 6, 7 and 12. The offences were committed on 8 and 16 June of this year. The 8th of June offences are permitting A and B to do an indecent act upon you and indecent assaults by you on them. The 16th of June offences are sexual violation by unlawful sexual connection with C and anal intercourse with C. The maximum penalty for the offences against A and B is 10 years imprisonment for each offence. The maximum penalty for unlawful sexual connection with C is 14 years imprisonment and for anal intercourse 7 years imprisonment.

At the time of the offences you were boarding at the house of A's parents. On 8 June you took A and his

school friend B for an outing which took in a picnic ground. You asked the two boys to remove their trousers. You touched each boy on his private parts and invited each to masturbate you, which they did. Later that night at home you invited A to sleep with you and during the night you played with his genitals. On 16 June you took A and B and B's 12 year old brother C on an outing. You supplied C with beer and rum. On the way home you stopped at the same picnic ground. While A and B were asleep in the back seat of the car you and C engaged in mutual masturbation which involved oral sex. When you arrived home you invited C to sleep with you. He did so and in the early hours of the morning you had anal intercourse with him and gave him $40.

Upon interview by the police you freely admitted the facts as outlined stating that you had a particular problem and realised you were doing wrong. That is not a surprising admission because these six offences, added to your previous convictions, make a total of 25 sexual offences mainly against young boys and on occasions young girls.

On 9 June 1966 when you were 19 you were sentenced on 4 charges of indecent assault of a boy and were sent to a detention centre followed by one year of probation.

On 11 July 1972 when you were 25 you were sentenced to four charges of indecent assault and one charge of an indecent act on a boy for which you were sentenced to 9 months imprisonment followed by one year of probation.

On 15 June 1976 when you were 29 you were sentenced to two charges of indecent assault on a girl and one charge of indecent assault on a boy. You were sentenced to two years imprisonment on each offence.

On 30 May 1980 when you were 33 you were sentenced to three charges of doing an indecent act with a boy under 16 and one charge of doing an indecent act with a girl under 12. You were sentenced to imprisonment for one year three months.

On 18 October 1983 when you were 36 you were sentenced to two charges of indecent assault on a boy under 16 and imprisoned for two years.

On 25 August 1987 when you were 40 you came before the High Court on a charge of indecent assault on a boy under 16. That charge was laid under section 140(1)(b) of the Crimes Act for an offence committed on 18 July 1986. The Judge was persuaded to give you an opportunity to reform. You had been taking a course of depro provera injections designed to suppress the sexual urge and you were attending a course designed to encourage

acceptance of personal responsibility for your past offending and to give you an insight into the causes of your behaviour with a view to instilling the self discipline required to suppress your deviant sexual urges.

The Judge sentenced you to supervision for two years upon terms that you undertook treatment and counselling. The Crown appealed to the Court of Appeal. By the time the Court of Appeal had obtained further reports and determined the appeal on 29 April 1988 that Court decided to allow you to continue with your course of psychological counselling and other treatment. The Court of Appeal was plainly reluctant to adopt that course considering that a custodial sentence would have been the proper sentence.

When you were sentenced in this Court Wylie J said:-

> "As I understand the treatment which you are now receiving it is not in itself a cure, that I think is apparent from the pre-sentence report and also from what your counsel has told me this morning. In other words you have got in addition to taking the medical treatment that you are doing now, you have got to form your own resolve and your own mental attitude to the problem which you have and you have got to work at overcoming it.
>
> Now let there be no mistake about it. This must be your last opportunity. If I am wrong in giving you this opportunity and the result is that you do offend again there can in my view be no possibility that you will escape a sentence of preventive detention which will mean that you will be confined to prison for many years and indeed the situation might never arise where you are thought fit to be released back into the

> public. That is what is at stake in your attitude to your problem. That must be clearly understood by you and it must guide every moment of your consideration from here on."

The Court of Appeal repeated that warning and, as I have indicated, but for the delay involved in having the matter determined at Court of Appeal level the Court of Appeal would clearly have reversed the sentence of Wylie J.

The circumstances of the offence which gave rise to those warnings were very much less serious than the six offences for which you now appear for sentence. On that previous occasion you had spent the night at the house of a woman friend. During the night you removed the pyjamas of her son aged eight years eleven months and fondled his penis.

Turning to the present offences, the emotional harm report upon A is that he has not been his normal self. He has become aggressive, is not concentrating while at school, is bed wetting more frequently than before and not relating well to his family. His parents are upset at your abuse of their trust. As Christian people they took you into their home as a boarder.

The report on B indicates a smaller degree of emotional harm which would appear to have been caused by the distinct change in personality of his older brother C.

C Has suffered a personality change. He has become an angry young boy. He has taken his anger out by damaging property and committing other offences. He has developed a distrust of adult males which has caused a communication problem with his father. He no longer displays open affection to members of the family including his brother B. He has lost his level headed way of dealing with provocative conduct of his school mates. In short, life for this family has been very seriously disrupted.

Positive aspects of the pre-sentence report are that as an employee you have performed to a high degree of satisfaction, a factor borne out by the evidence given by your employer Mr Waters when you last appeared in this Court for sentence. Also from time to time you have submitted to treatment including chemical treatment, in particular at the time of your last sentence and subsequently. Unfortunately the treatment has not succeeded as the present charges indicate. One concern of the probation officer, as reflected in his report, is your apparent inability to accept full responsibility for your conduct. He referred by way of example to your view that you did not force alcohol upon the boy C but gave into his request to be supplied. He has referred to your depression and to your particular form of sickness which you view as responsible for your conduct. The probation officer regards this attitude as a medical model explanation at odds with accepting responsibility and

contrary to the approach of a sexual offenders group with whom you became involved during your period of supervision. Shortly put, what the probation officer is telling me is that you maintain that you have this sickness which is really not your fault but you have it and it causes you to offend. That has been refuted today by your assertion that you accept responsibility for what you have done in the past. You are remorseful. You have made a public apology to the parents and children accepting responsibility as you now say you do. You are prepared to undergo any form of treatment which can be made available to instil in you the necessary self-discipline required to recognise the warning signs and to take evasive steps accordingly. Well it is a matter for me to decide on the evidence before me whether or not the Court can place reliance upon what you now say, and if the Court can, whether the Court should not impose a period of preventive detention.

You clearly qualify for preventive detention. Qualification does not however mean that the Court has no discretion. The warnings given by Wylie J and the Court of appeal do not deprive this Court of its discretion. The relevant statutory provision requires me to be satisfied that it is expedient for the protection of the public that you should be detained in custody for a substantial period before I can pass a sentence of preventive detention. I have been referred to some 17 decisions of the Court of Appeal which prescribe the

principles to be applied. The sentencing Judge must always have in mind the fact that where it can be done preventive detention should be avoided in favour of a sentence which will finally come to an end. In each case the Court has to decide if there is a real risk that the offender will offend in a manner such that the Court has no real option but to decide upon preventive detention. If the Court is not so satisfied the usual principle of disparity is displaced. In selecting a finite sentence as a proper alternative to preventive detention a Judge may impose a sentence of greater severity than would be otherwise justified.

The contents of the pre-sentence report clearly point in the direction of preventive detention. Dr Nannestad, psychiatrist, is unable to add to the probation report. The doctor refers to your lengthy history of sexual offences upon children, to the treatment programme undertaken following the last sentence and to your failure to learn methods of avoiding offending. The doctor also refers to an alcohol abuse problem. The doctor suggests that upon your eventual discharge you be directed, permanently if possible, to attend supervision under someone knowledgeable in the behaviour and treatment of sexual offenders in order to minimise the chance of you ever again offending.

A glimmer of hope appears in the report of Dr Felix Donnelly. He is a director of the Youthlink Trust.

He refers to two principal reasons for your deviant behaviour. The first is alcohol. When you over indulge in drink you get an over-riding urge to offend against young males. You claim never to have offended when sober. The second is rejection by your family and friends in consequence of which you lack self control. His opinion is that you must renounce alcohol permanently. He is also of the opinion you could be considered for the programme at Rolleston prison which addresses in a way that other prisons have not your basic problem of offending against young people. He tells me you have a motivation to change but would need considerable support. The motivation to change may well have been reflected in your own submissions to me this morning.

A further glimmer of hope appears from a letter written to me by a woman who has been visiting you in the prison. She is prepared to give you all the support you require. She would be prepared to have you in her home on a community care basis if that were possible.

It goes really without saying that you are in a sorry state. You are divorced, you are not permitted to see your children. You have no family support. The only friend you seem to have is the woman to whom I have referred. You have no possessions. Indeed there does seem to be little hope. You fear preventive detention. Dr Donnelly considers you would become suicidal if sentenced to preventive detention. Therefore the task of

the Court is by no means easy. The choices are a lengthy definitive sentence with recommendations of the type referred to by Dr Donnelly or preventive detention. Notwithstanding that the prison authorities have in recent years become sufficiently enlightened to try and do something for offenders in your category, I refer to the Rolleston programme, there is no guarantee that you would come out of the programme and not lapse and offend again. You have given that type of undertaking to the Courts before. Unfortunately despite what at times must have been valiant attempts on your part to effect a cure you have not been able to succeed.

When I ask myself if there is a real risk that you will continue to reoffend given the motivation to reform, the need to banish alcohol and the availability of the Rolleston programme the answer has to be; yes, there is a real risk. And when I ask myself if this risk will be significantly reduced by imposing a lengthy definitive term of imprisonment the answer has to be; no. I consider I have no option but to sentence you to preventive detention, no option in the sense of the exercise of my discretion. Insofar as it is relevant I certify that you have been in penal custody on remand since 18 June of this year. I sentence you to preventive detention.

I require a copy of my sentencing remarks and a copy of Dr Donnelly's report to be sent to the Superintendent of the prison so that his attention is

drawn to the nature of your offending, to your fear of the consequences of this sentence and to the potential for suicide. You may stand down.

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