

IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

S2/99

REGINA

V

ROBERT JOHN McCORKINDALE

Date: 28 May 1999

Counsel: R P Bates for Crown
P S Rollo for Prisoner

SENTENCE OF CHISHOLM J

Solicitors: Crown Solicitor, Dunedin
Webb Farry, Dunedin

Robert John McCorkindale, you have pleaded guilty to five counts of indecent assault involving two young girls aged six and four. The parents of those young girls befriended you. You were invited to their home and on the first occasion that you were at their home, and while the four year old child was sitting on your knee, you put your hand under her dress and touched and rubbed her vagina. Later you repeated those actions. Around a week after that there was a similar assault on the six year old child while she was sitting on your knee. She asked you to stop and you did so. Several months later there was another episode involving the six year old in her bedroom. You were going to read her a story. Instead you pulled down her underclothing and rubbed her vagina. She told you to stop and at around the same time you were surprised by her mother. The following weekend the six year child was involved again when you were assisting her over a rope or ropes in a playground. You took the opportunity to put your hand up her dress and to rub her vagina. When she asked you to stop you did so. You have admitted this offending to the police.

You are 44 years of age. In 1987 you were convicted of abducting a child with intent to have sexual intercourse and were also convicted of indecently assaulting that same child. The child was under the age of 12 years. You were sentenced to imprisonment for a total of one year on that occasion. In 1993 you re-offended. This indecent assault of a girl under the age of 12 years resulted in a sentence of two years eight months. The previous offending, coupled with this current offending, qualifies you for preventive detention which the Crown seeks.

You have acknowledged to the probation officer that you are attracted to young girls. He has concluded that you have limited empathy, which means limited understanding, for the trauma and suffering of your victims. The probation officer believes that there is a high risk of you re-offending if you are released into the community without 24 hour supervision.

This information has been supplemented by a psychiatric report from Dr du Fresne and by a report, provided this morning by your counsel, from Mr Reid of the Community Care Trust. According to the psychiatric report you have been in contact one way or other with the psychiatric services since 1992. It is clear, as Mr Rollo emphasised, that you suffer from learning difficulties and social difficulties and inadequacies. As Mr Rollo said, in some respects you have been dealt a harsh hand in life but you are not alone in that Mr McCorkindale and those who have been dealt harsh hands have to assist themselves as well as seeking assistance from others.

The Kia Marama programme, which is discussed in Dr du Fresne's report, was designed to provide assistance to you so that you could start to assist yourself. It is of concern that I read in that report that at times you apparently choose not to implement the strategies that the Kia Mara programme was intended to put in place. While Dr du Fresne said in her report that there was little evidence of true paedophilia in your case, it is acknowledged that there is a significant risk of re-offending. In broad terms Dr du Fresne agrees with the probation officer that a high level of supervision would be required to reduce the risk of re-offending. Dr du Fresne concludes her report by saying:

"Given the fact that Mr McCorkindale is not primarily sexually attracted toward children, and the possibility that a safe and effective individualised community-based treatment programme for Mr McCorkindale could probably be achieved with appropriate levels of funding and the capacity for statutory enforcement of the programme, the Court may wish to consider the appropriateness of finite sentencing rather than preventive detention in this matter."

Dr du Fresne had discussed the matter with Mr Reid, a senior psychological clinician with the Community Care Trust. In his report Mr Reid refers to two matters. First, that you told him you have never penetrated your victims. Let me tell you this, Mr McCorkindale, your offending is extremely serious whether or not your victims are penetrated. It seems that has not been driven home to you. None of the reports that I have read indicate that it is beyond your intelligence to realise that touching anyone without their consent is not acceptable. The second matter is that there is apparently a willingness on your part to blame others. People have a good deal of sympathy for you, Mr McCorkindale. They have tried to help you. You are going to have to start to help yourself. The quickest way to turn people off who are trying to help you is to blame others. Mr Reid considers that if there is comprehensive support the risk of re-offending would be reduced.

This morning Mr Narby, a member of the forensic team, provided me with some further information about the possibility of a support programme being put in place once you are released from prison. Funding for such a programme would have to come from the Health Funding Authority. There is a recent precedent for such funding. But no-one can be sure whether funding would be available at the end of a lengthy term of imprisonment.

I have already told you, Mr McCorkindale, that you are eligible for preventive detention. Preventive detention will have been explained to you. It is an indefinite

term of imprisonment. I have the power to impose a sentence of preventive detention on you if I am satisfied that it is expedient for the protection of the public that you should be detained in custody for an substantial period. The information that I have before me is such that I could be so satisfied, but I have a discretion as to whether or not I will impose that sentence.

During the course of submissions on behalf of both defence and Crown there has been reference to the decision of the Court of Appeal in *R v Leitch* [1998] 1 NZLR 420. In that decision it was indicated by the Court of Appeal that when weighing the exercise of the discretion whether to impose preventive detention, the Court will ordinarily consider whether the protective purpose of preventive detention could reasonably be met by an available finite sentence of imprisonment.

This is a difficult decision for me to make. I have considered all the available information including the submissions of counsel and the guiding principles set out in *R v Leitch*. I have concluded that a finite sentence is appropriate in your case. In reaching that conclusion I have had particular regard to the report of Dr du Fresne and to the possibility that a support structure could be put in place. A sentence of preventive detention would cut off that option.

Having reached the conclusion that a finite sentence, and that means a sentence that ends at a particular time, is appropriate, it is necessary for me to decide upon the length of that sentence. You have already been sent to prison twice. On this occasion your conduct was persistent. Notwithstanding that the young child's mother effectively caught you in the act, you were stupid enough to later repeat that

conduct. Somehow or other it has to be driven home to you, Mr McCorkindale, that this sort of conduct is not acceptable. The offending is very serious indeed. While others will try and help you, you are going to have to help yourself. I also need to take into account the importance of protecting the public. You are sentenced to seven years' imprisonment. You need to realise, Mr McCorkindale, that you have come within a whisker of being sent away indefinitely. There won't be another chance. It is almost inevitable if you offend again that you will be sent to prison indefinitely. You will not be able to blame others.

There will be an order suppressing the name of and reference to the Church and the bowling club. There has been an application for the suppression of your name which is supported by a letter from a medical practitioner. Effectively the application is for the protection of your parents. I have every sympathy for your parents, but it is simply not possible for me to suppress your name. The community must know and be able to identify offenders of this type. There is also a data bank compulsion order.

A handwritten signature in black ink, appearing to be 'A. du Fresne J', written in a cursive style.

ADDENDUM

A copy of these sentencing remarks, the probation officer's report, Dr du Fresne's report and Mr Reid's report are to be provided to the prison authorities so that before McCorkindale becomes eligible for release the possibility of putting in place a support structure of the type referred to in the reports can be considered.

A handwritten signature in black ink, appearing to be 'A. du Fresne J', written in a cursive style.