

**Publication of names or
particulars of identity of
complainant prohibited
by s139 Criminal Justice
Act 1985**

THE QUEEN

v.

ALFRED FRANCIS CLAYDON

Coram: Eichelbaum CJ
Casey J
Williamson J

Hearing: 14 June 1995 (at Christchurch)

Counsel: J Eaton for Crown
A J Davis for Appellant

Judgment: 14 June 1995

JUDGMENT OF THE COURT DELIVERED BY CASEY J

The appellant was found guilty by a jury in the District Court at Christchurch on a count of indecently assaulting his former de facto partner's daughter. It was a representative charge, the Crown accepting that it covered the period from 1978 to 1982 when the girl was 4 to 8 years of age. It involved incidents of touching her vaginal area with his fingers under her clothing and the appeal is against the sentence of 18 months' imprisonment imposed on 24 February 1995.

It should be noted that at the same trial the appellant was found not guilty on two charges, one of attempted intercourse with the complainant and a representative

charge of inducing her to do an indecent act upon him. A further count of later indecent assault on her sister still awaits resolution.

In his sentencing remarks the Judge referred to the serious breach of trust involved in the offending which occurred in her mother's absence, and he also mentioned the problems experienced by the complainant during her adolescence as set out in the Victim Impact Report. She described isolation from her family, problems with school, difficulties in sexual and other relationships, and fear and lack of trust. He noted that some of these problems could have been the result of disharmony in the family, but having seen her in the witness box he felt she accurately described a period of real isolation from the family during her teenage years.

This has been clarified by Mr Davis in his submissions explaining that the girl's mother, as a solo parent, had formed an association in which she subsequently lived with the appellant permanently from about 1982. She had then moved to his nearby house leaving her own children, ranging in age from 8 to 15, to more or less fend for themselves in the family home. She would return in the evening to cook meals and then go back to the appellant's house. The girl said that the offending occurred in her own home or in the appellant's house when she went to visit her mother there. Accordingly it is not surprising that from the lifestyle described by Mr Davis, and to a certain extent confirmed in the complainant's evidence, she would have felt a sense of isolation. Mr Davis also disputed her claim of not being able to form lasting sexual or other relationships.

The appellant is a man of 45 with only one conviction in 1987 for a minor incident unrelated to offending of this nature. The pre-sentence report refers to his steadfast denial of these offences and his refusal to acknowledge the need for professional assistance, factors which the probation officer recognised as telling

against any sentence which involved provision for treatment or counselling. For these reasons the Judge also rejected the option of a suspended prison sentence and we agree this was not a situation where such a sentence was called for.

The Judge also took into account the fact that the offending occurred many years ago, referring to decisions of this Court in which that circumstance had been a feature. He regarded the offences as serious, rejecting a submission that it was at the lower end of the scale justifying a non-custodial sentence because of his assessment of the matters in the Victim Impact Report and in particular because of the age of the complainant at the time.

We agree that the offending overall was serious. In her evidence the complainant said it started when she was aged 4 and continued regularly, sometimes two or three times a week and sometimes not for a couple of weeks, but basically whenever the appellant had the chance on those occasions when her mother was absent and it happened either in the bedroom at her own house or at his nearby house when she went to visit her. She said she was too scared to tell anyone what he was doing. She underwent counselling later and eventually disclosed the offending to the police in 1992. It is accepted that there was no penetration of her genitalia by his fingers.

In his submissions in support of the appeal Mr Davis maintained that the sentencing Judge had placed too much reliance on the Victim Impact Report in the light of the matters to which he drew our attention, referred to earlier in this judgment. The Judge certainly accepted that there were problems with the complainant's family, and that apart from the offences with which he was dealing these may have played a significant part in the problems which she faced in later years. It may well be that he did place more significance on the report than the actual circumstances warranted, but this is a matter on which we cannot reach any

firm conclusion in the absence of a proper enquiry and evidence. Whatever the real position on this aspect, we are satisfied that the Judge did take into account the other matters which could be put forward in mitigation, namely the appellant's lack of offending of this or any other kind since these episodes and the fact that they occurred so long ago. He settled on a term of 18 months' imprisonment.

We agree that this could be regarded as a relatively severe sentence having regard to the time which has elapsed since these events, but on the other hand they were indecent assaults on a very young child in relation to whom he was in a position of trust as a virtual stepfather, and they continued for many years. We can see no basis on which this Court could properly interfere with such a sentence on the grounds that it is manifestly excessive or inappropriate and accordingly the appeal must be dismissed.

A handwritten signature in black ink, appearing to read "Mr. Casey". The signature is written in a cursive, slightly slanted style.

Solicitor: *Crown Solicitor, Christchurch*