IN THE COURT OF APPEAL OF NEW ZEALAND CA305/00

THE QUEEN

V

ROBERT JAMES MOFFAT

Coram: Blanchard J
Tipping J
McGrath J

Judgment: 2 November 2000
(On the papers)

JUDGMENT OF THE COURT DELIVERED BY BLANCHARD J

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[1] The appellant, Robert James Moffat, pleaded guilty to one charge of indecent assault on a girl and one charge of doing an indecent act with intent to offend and was sentenced in the Christchurch District Court on 16 August 2000 to 18 months imprisonment. He appeals against this sentence.

[2] The appellant applied for legal aid in respect of this appeal. The Registrar declined the application after the necessary consultation pursuant to s15 of the Legal Services Act 1991. The decision to refuse aid was confirmed on review. The appeal is, therefore, to be determined on the basis of written submissions.

[3] The indecent assault occurred in 1995 and involved the appellant's 13 year old stepdaughter. The appellant sat next to the complainant in the lounge of the family home and rubbed her breasts outside of her clothing. The complainant attempted to move away but the appellant followed her and continued to rub her breasts until she slapped his hand and left the house to go to a neighbour's home. The second incident again involved the appellant's stepdaughter. In early 1997 as the complainant and a friend were playing cards in the kitchen of the family home, the appellant exposed his penis and placed it on the card table in front of the two girls.

[4] The appellant submits that the sentence was excessive in all the circumstances as the offending was at the less serious end of the scale of offences of this nature. It is submitted that the sentencing Judge had disproportionate regard to the negative factors outlined in the Probation Officer's report. It is further submitted that the sentencing Judge had improper regard to a pre-sentence report prepared in respect of a sentencing in 1997 on other charges. The appellant also complains that a letter written by the Clinical Director of the STOP programme for sexual offenders was not available to the sentencing Judge.

[5] The appellant had some history of sexual offending against children. The offence for which he was convicted in 1997 and sentenced to 10 months imprisonment involved an indecent act with the young daughter of a neighbour. That seems to have occurred in 1996. The appellant was on bail on this matter when he committed the indecency in early 1997.

[6] In sentencing on the present occasion the Judge had regard to evidence relating to the appellant's previous difficulty in accepting responsibility for his actions. The gross breach of trust by a father to a child under his care was also an important factor. Although the offending was not in the most serious category of offences of its kind, sexual offending against children has long been recognised by the courts as a serious crime. It cannot be said that the sentence was excessive taking into consideration all the circumstances of the offending by someone who was a repeat offender. The appellant suggests that if he had been sentenced for all matters at the same time a total sentence of 28 months would have been excessive. We do not agree. He already had convictions for relevant offending in 1979 and

1993. The further three offences involved three different young girls, one of whom was a stepdaughter (so involving a breach of trust) and the last of them was committed while the appellant was on bail.

[7] As he was entitled to do, the Judge had regard to the pre-sentence report prepared in respect of the 1997 conviction. He properly placed some emphasis on the appellant's previous pattern of denying responsibility for offending and observed that, despite the guilty pleas, the appellant had denied the offences in an interview with the probation officer and had claimed that the guilty pleas were merely to save his stepdaughter from further distress. Although the letter from STOP, dated some three weeks after the sentencing, does reflect an apparent change in attitude towards the offending, it does not in our view outweigh the factors which required a substantial sentence of imprisonment. The sentence imposed was within the range available to the Judge even if that letter were to be taken into account.

[8] It follows that the appeal is dismissed.