

THE QUEEN

V

FETA TULUI LEAIOLOTU

Coram: Blanchard J
 Tipping J
 McGrath J

Counsel: L Iosefa for Appellant
 A Markham for Crown

Judgment (on the papers): 26 August 2002

JUDGMENT OF THE COURT DELIVERED BY BLANCHARD J

[1] This appeal against conviction and sentence has been heard on the papers under the Crimes (Criminal Appeals) Amendment Act 2001. The relevant materials, including written submissions which have been received in accordance with r29 of the Court of Appeal (Criminal) Rules 2001, have been considered by the members of the Court who have conferred and agreed upon this judgment.

Offences and sentence

[2] The appellant was found guilty in the High Court at Christchurch on four counts involving sexual offending against a female complainant aged ten, namely sexual violation by unlawful sexual connection, indecent assault (2) and inducing an indecent act. The first three counts were representative charges. On 22 November 2001 the appellant was sentenced to concurrent terms of three and a half years imprisonment on each count.

Relevant facts

[3] The appellant was staying with the female complainant's mother, to whom he is related, at the time of the offending in January 2001. The appellant slept in the room shared by the complainant and her younger brother. Over a period of one to two weeks the appellant repeatedly indecently assaulted the complainant by kissing her and licking her breasts. On one occasion he induced her to do an indecent act by making her touch his penis. He also sexually violated her on several occasions by digitally penetrating her vagina. The appellant promised the complainant \$5 a week if she kept quiet about the offending.

Grounds of appeal

[4] The appellant challenges the conviction on the single ground that the verdicts were unreasonable in the circumstances, not being supported by the evidence. The jury is said to have given insufficient consideration to the "fact" that medical evidence adduced at trial does not support the commission of any indecencies upon the complainant.

[5] The appellant's sentence is also challenged on the basis that it is excessive. The judge is said to have failed to take into account mitigating factors such as the appellant's lack of previous convictions and evidence of previous good character.

Reasons

[6] We are satisfied that the appeal against conviction has no merit. It was open to the jury to accept the evidence of the complainant concerning the various incidents. The appellant did not give evidence. The impugned medical evidence involved an assessment of the complainant by an examining doctor that was consistent with (although by no means conclusive of) sexual abuse. The extent to which the jury could find assistance in such evidence was made apparent in the evidential statement of the examining doctor which was read to the Court. There is no support in the material before the Court for the appellant's contention that the jury has failed properly to assess the implications of the evidence, the weighing of which was entirely a matter for it.

[7] The appeal against sentence is equally unmeritorious. The sentencing Judge expressly noted that the appellant's sentence was fixed with reference to the "mitigating factor" that he was "in substance, a first offender". The sentence ultimately imposed falls well within with the range of two to five years (before allowing for mitigating factors) mentioned by this Court as available for such offending in *R v M* [2000] 2 NZLR 60. Indeed, that range was related to offending against somewhat older complainants. We see no basis for disturbing the three and a half year sentence.

Decision

[8] The appeal is accordingly dismissed.

Solicitors:

Crown Law Office, Wellington