

**IN THE DISTRICT COURT
AT WHANGANUI**

**CRI-2015-083-000426
[2017] NZDC 13506**

THE QUEEN

v

KEVIN LAURENCE ROBB

Hearing: 21 June 2017
Appearances: M Wilkinson-Smith for the Crown
P Brosnahan for the Defendant
Judgment: 21 June 2017

NOTES OF JUDGE P P CRAYTON ON SENTENCING

[1] Kevin Robb, you face sentence now on two charges which were charge 4 and 5 of the charge list upon which the trial commenced. They reflect sexual connection with a young person, the performing of oral sex upon your victim and sexual connection by way of sexual intercourse with the same victim.

[2] The maximum sentence in each instance is 10 years' imprisonment.

[3] On 11 April this year, on the second day of your trial you entered guilty pleas. The complainant had given evidence in chief and cross-examination had commenced, although I accept that if the trial had been taken through to verdicts on each of the charges you faced, there would have been a significant period of cross-examination to follow.

[4] You came to know your victim through badminton in 2006, 2007. She was a talented New Zealand age representative. You were assistant manager and coach of a representative team. She was a friend of your daughter who was a similar age. You were 44 years old. She was, at the time of your offending against her, 13 and 14 years old. You exchanged text messages with her. On a training weekend there was a kiss. You then travelled to Whanganui from your home in Levin to see the complainant. It was at your suggestion and your suggestion was that you could hang out together. She gave her mother an excuse to be with you. You took her to the beach. You kissed her and you performed oral sex upon her. That is the offence reflected by charge 4.

[5] In May 2007, you met again by arrangement. You travelled, again, to Whanganui from Levin. You had organised a motel. She was in a school uniform. You had sexual intercourse with her. You wore a condom. The relationship ended a few months later at her instigation.

[6] Although the police were involved at that early stage subsequent to those offences, there was no formal complaint until 2014 and in November 2015, as was heard in evidence, there were a series of phone calls to you and with you. Given what you said in those calls, the degree to which you became entrenched in your denials is clear.

[7] But I make clear from the outset; I sentence you today for what you have done, and what is reflected by your guilty pleas. I make it clear that the parameters of culpability for sentencing does not go beyond that which is properly reflected by the evidence and by your guilty pleas. I make the assessment of your culpability based on that evidence and inferences that can probably be drawn from that evidence.

[8] I disregard, as I must, any speculation that has been placed before this Court from any victim impact statement as regards matters which go beyond the facts which form the basis of this case and your offending. Certainly, I put to one side any suggestion of offending that goes beyond that which is reflected by the charges.

[9] You face sentence on two serious charges but only upon those two very serious charges against this victim.

[10] I have heard today by the audio record, the victim impact statement of your victim. It identifies, in graphic detail, the harm caused to your victim by this offending. She articulates eloquently and precisely just as to how young she was. How unready she was for your attention. How vulnerable. How unable she was to cope with the responsibilities and the consequences of the decisions that you asked her to make by the arrangements to meet and the sexual acts you embarked upon with her at her tender age.

[11] The affect of her naïve choices on her and her family in the years since this offending are precisely placed before this Court. She identified in that victim impact statement vividly why young people of tender years need the protection of the law. There is no doubt she suffered real emotional harm and that emotional harm is long term.

[12] There was the potential that your offending against her could have completely derailed every aspect of that young person's life. To her credit, she has not let your offending against her, prevent her academic achievements subsequently but you cannot escape for responsibility for robbing her of the joy of life for years as she went through maturity into adulthood, of the growing sense of freedom and the relationships which should be a part of a normal teenager, young adults life.

[13] You have undermined, as is clear, her ability to form healthy, trusting and loving relationships and friendships. It is hoped that she is now able, you having accepted culpability to advance her rehabilitation.

[14] It is to her credit that she voices a determination that she will turn a positive outcome from your offending against her.

[15] I have heard victim impact statements from the victim's mother. What is clear is that the trauma of your offending, the harm done by your offending, did not affect only your victim but also took a high personal effect upon the mother of the

victim. To live with the belief that someone has failed their child came through vividly. The worry and the stress that you caused and the way it impinged on everyday life comes through vividly. The emotional scar of your offending is clear across the whole family. The trust lost because of denials, because of lies, may never fully be recovered within that family unit.

[16] Your victim's stepfather identified also the affect on a parent who realises what has been lost. With mature reflection, experience of life can reflect the real cost of your offending and the anger and no doubt, the frustration, that he felt and still feels.

[17] I have had before me a pre-sentence report which presents a different person to the person clearly who offended on these occasions. It identifies that you are someone who retains the support of your wife and your family. That you have a business which you have built and which will continue. That you have genuine remorse and ownership for your offending. I have had and borne in mind the letters of support from you daughters, from those who know you well and those who portray, through those letters, a different person to that who offended so seriously against your victim. They speak of that different person. A family man, a trusted member of the community.

[18] But you face sentence for serious offending and only a certain amount of regard can be had for the different person who you were prior to the offending and, no doubt, who your family believe you can once again become.

[19] The purposes and principles of sentencing are clear in cases such as this. Your offending has to be denounced. There has to be deterrence of you and a clear message to others in the community who may consider offending against those who are vulnerable, young in a similar way in similar circumstances. There is, of course, an element of protection of the community at large.

[20] I have to engender in you a responsibility for the offending. I have to hold you accountable to the community for the harm you have caused. There has to be

consistency with sentencing for other offenders committing similar offences in similar circumstances.

[21] The outcome must be the least restrictive, consistent with those principles and purposes and, where possible, there has to be a desire and it is hoped, an outcome which assists in your rehabilitation and remonstrations.

[22] In passing sentence today, I must first identify the starting point for sentence. I initially need to identify the aggravating features for sentence so that it can be further identified where this offending falls in the scheme of offending of this type.

[23] I have had the benefit of considering a large number of cases which have been provided by counsel. There are certain features which are significant when assessing individual culpability for offending in these circumstances.

[24] The sentencing starts from the premise that the law is designed to protect young people who are vulnerable and are in a position of vulnerability. The maximum sentence, as I identified earlier, is 10 years' imprisonment upon each charge.

[25] The Crown have referred to me *R v Johnson*¹, *R v H*². They identify, in those cases, that the Court marked certain factors which are important considerations. The vulnerability of the victim, a significant age gap, a breach of trust, repeated offending, full penetrative sex, premeditation or grooming, abusive or demeaning behaviour and victim harm.

[26] The Crown identify here that your victim was vulnerable. That there was a significant age gap, that there was breach of trust, that there was premeditation or grooming, that there was full sex and there has indeed been significant victim harm.

[27] The Crown further refer to *Burdett*³, *Misileski*⁴ and the authorities referred to in *R v Johnson*⁵ including *Brunie*⁶, *R v Henderson*⁷. What that identifies is clearly a

¹ *R v Johnson* [2010] NZCA 168.

² *R v H* [2008] NZCA 237.

³ *R v Burdett* [2009] NZCA 366

wide range of sentencing available, particularly here where a breach of trust allied to that wide age gap.

[28] The Court, in *Johnson* identified clearly that a different combination of aggravating and mitigating factors might produce yet another result than that identified in *R v H and R v Johnson* itself. It follows at the starting point of four years, should be seen as no more than a mid point in the range of offending where there is moderate culpability. And it is important to stress that. Against that framework of higher Court authority, the Crown submit that a starting point of three and a half years to four years imprisonment is appropriate.

[29] Mr Brosnahan, on your behalf, in written submissions and orally today, does not really disagree with the Crown's approach to sentence save in one respect and he does not, in the end, disagree with that band of sentencing.

[30] It is disputed on your behalf that there is grooming present in the sense of targeting or grooming behaviour but Mr Brosnahan submits that otherwise the Crown have identified the appropriate aggravating factors or factors which increase culpability and submits that a starting point in the range of three and a half years to four years' imprisonment is consistent with the approach identified in *Johnson*.

[31] I identify, for the purpose of the starting point in this case, that the following factors are matters which affect your culpability:

- (a) The age or vulnerability of the victim. She was 13 to 14 years old. In the scheme of such offending that is an age which reflects moderate vulnerability. She is certainly at an age where she has not the social or emotional skills or maturity.
- (b) The age difference is towards the top of the range. You were 30 years older. You were not only a middle aged man; you were a family man

⁴ *R v Misileki* [2008] NZCA 513.

⁵ *R v Johnson* [2010] NZCA 168.

⁶ *R v Brunie* [2009] NZCA 300

⁷ *R v Henderson* [2005] NZCA 524.

with a daughter of a similar age to the victim. That gives you a clear insight into the vulnerability of your victim.

- (c) There was a breach of trust present to a high level. You were an assistant manager of a regional sports team, a coach. She was someone you were responsible for. Your victim placed her trust in you. But also, and this cannot be disregarded in a case such as this, so did her parents, so did those who were responsible for her care. You were placed in her care with their trust and you betrayed that trust.
- (d) I consider whether there was premeditation or grooming. When one stands back and looks at the overall circumstances of this offending, there cannot be but the conclusion that there were present, features of premeditation and grooming. You controlled this relationship. You dictated the where, the when. You arranged the meet up which led to the first offence. You travelled from Levin on your terms. You took her to the beach. You told the complainant if she told anyone then there would be significant personal and professional cost for you. That founded a significant basis of guilt in someone so young, or worry and stress. You chose the where and the when, travelling from Levin to a motel which you had booked. Given the way that events unfolded, it cannot be other than a conclusion that there was a high degree of premeditation and what can only be described as grooming behaviour.
- (e) There was full penetrative sex. Whilst there was not repeated intercourse, there were repeated incidents of sexual connection. Two separated in time. This was not occasions on the same day.
- (f) There was, as we have heard today, significant victim harm but I identify that there is no suggestion of abusive or demeaning behaviour.

[32] In my assessment, this falls, to be properly described, as placing your culpability towards the upper level for offending of this type occurring over the two occasions and that is what moderates the sentencing start point from those identified in *Brunie* and *Henderson*.

[33] I take the appropriate starting point at the top of the range identified by counsel for the Crown and by your counsel, at four years' imprisonment.

[34] I then turn to consider what factors you can be given benefit by way of credit.

[35] The first is significant. It was the emotional harm reparation which was identified at the time that you entered your pleas. It has been followed through and Mr Brosnahan identifies that there was no anticipation of any failing in that regard.

[36] The Crown and defence counsel concur in the submission that this merits an adjustment to sentence by way of credit for that emotional harm reparation, offered as an acknowledgement of the harm you have caused, hoped that in some way, it starts, and I stress only starts, to make reparation for the harm your actions have caused. That offer is of \$10,000 to be paid today and I identify and concur with the approach of counsel.

[37] I then consider your previous good character. You have no previous convictions. You are 54 now. You were 44 at the time of your offending. The Crown submit that there has to be some tempering. That the reality is that there has to be an acknowledgement of your character, however, that character which facilitated your offending and the trust that was placed in you, is a significant aggravating factor which leads to an uplift in your sentence. The Crown may well be right that in terms, they effectively balance each other out. But I must discreetly identify that you will be given credit for your character, both prior to this offending and since. You are, as Mr Brosnahan has identified, someone who has been a positive and contributing member of the community in many ways over many years before and since this offending. But, the person who was spoken so highly of in those letters of support, the person who, no doubt, was for those years, a respected father and member of the community, you are no longer that. You have lost your

good character. You may never regain the standing you once had. Your trust that you earned has been lost in the most stark and significant way.

[38] Placed before me have been materials which identify your rehabilitation efforts. You have self-referred since entering your pleas in April. You have undergone counselling aimed at ensuring offending does not recur. You have resigned from positions on public bodies and I acknowledge that those efforts are a start. That you indicate an intention to self fund your enrolment on achieving your release.

[39] I concur with Mr Brosnahan that is clear acknowledgement and you have, it seems, through those efforts, done what you can in the time since entering your pleas but I have to also measure the degree to which acknowledgement can be given to place them into the context that, unfortunately, it is only since you entered your pleas in April. That is by circumstance due to your long term and entrenched denials.

[40] Remorse. The pre-sentence report identifies what is viewed by the report writer as genuine remorse. The Crown say little credit can be given when viewed objectively because conviction was inevitable and it was only then that you effectively owned up. Mr Brosnahan identifies on your behalf that it is genuine, that it's flowed through to a letter of apology to the complainant and that letter should be provided not only to the complainant but with her permission to her parents. That is, Mr Brosnahan says palpable and clear remorse, that we are dealing with human nature. That you have, by that acknowledgement, placed yourself within a small community in full knowledge of your offending.

[41] I cannot but observe that no doubt your expressions of remorse now would have been so, so much more significant, both to your victim, to her family and, I suspect, long term going forward to your own family had they been made, if not in 2008 but when you were confronted in 2014, 15 and when you were charged.

[42] There is an outward expression of remorse which appears genuine. That you have, now, belatedly taken ownership for your offending but it has been a very, very

long time coming. It is human nature but Mr Robb, the credits that you can receive is by that human nature tempered.

[43] You have entered guilty pleas. The Crown identify that credit is limited because of the range. Mr Brosnahan identifies the top of the range, the Crown identify five to 10 percent. But I have to examine the circumstances. Your denials prolonged these proceedings for the victim. They ensured she had to give evidence in chief and there can only be limited credit but I do acknowledge that it was before full cross-examination had been entered.

[44] Taking those matters into account, the Crown identify when adjusted for emotional harm reparation; that your sentence should be in the range of two years, nine months to two years, 11 months as an end sentence. On your behalf, Mr Brosnahan recognises that the mitigation will still fall short of that allowing a short term to be imposed and that the sentence will be in the range of two years, one month to two years, six months.

[45] On my assessment, from the starting point of four years imprisonment, you should be given the identified credit for the emotional harm reparation of \$10,000, that is of 15 percent, that takes the starting point to 41 months.

[46] I address good character, rehabilitation and remorse. I allow, when considering all of those matters a further 20 percent. That takes your starting point for sentence to 32 months and three weeks. I have, in addressing those matters, taken care to individually credit what is available in the circumstances as now present.

[47] Mr Robb will you please stand. I finally consider what credit can be given for plea. I take care that there is not double-counting in the element of remorse already allowed for. In the circumstances of your very late plea, there will be seven percent credit allowed. That takes the end point of sentence to two years, six months. That will be imposed upon charge 5, sexual connection reflecting sexual intercourse. There will be 18 months concurrent upon charge 4, reflecting the occasion of oral sex. There will emotional harm reparation ordered to be paid

