

**IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY**

**CRI-2014-019-005279
[2017] NZHC 1756**

THE QUEEN

v

SHANE BRADY GREY

Hearing: 27 July 2017
Counsel: RRL Guthrie for Crown
CD Bean for Defendant
Judgment: 27 July 2017

SENTENCING REMARKS OF DOWNS J

Solicitors/Counsel:
Crown Solicitor, Hamilton.
CD Bean, Hamilton.

Introduction

[1] Mr Grey, you were found guilty by a jury in the District Court of sexual offending against five young victims. It is common ground I must impose a substantial term of imprisonment on you. In issue, however, is preventive detention. Preventive detention is an indefinite sentence. The case was transferred from the District Court to this Court as the Crown contends that sentence should be imposed. Your lawyer, Mr Bean, argues a long prison sentence without preventive detention is sufficient. More about that later.

The charges

[2] You were found guilty of seven charges:

- (a) Two of doing an indecent act on a girl under 12;¹
- (b) Two of doing an indecent act on a boy under 12;²
- (c) Two of doing an indecent act on a young person;³ and
- (d) One of sexual violation by unlawful sexual connection.⁴

The facts

[3] All of your offending occurred between 11 September 2013 and 3 September 2014. As observed, there are five young victims.

Offending against W

[4] W and his grandparents moved to live with you for two separate periods during 2013. They did so, in short, because they had little money. After they returned home, they maintained close contact with you.

¹ Crimes Act 1961, s 132(3). The maximum penalty is 10 years' imprisonment.

² Crimes Act, s 132(3). The maximum penalty is 10 years' imprisonment.

³ Crimes Act, s 134(3). The maximum penalty is seven years' imprisonment.

⁴ Crimes Act, s 128(1)(b). The maximum penalty is 20 years' imprisonment.

[5] W went to your home to play video games. You were drinking. W began to fall asleep so you told him to sleep in your bed. He did. While he was asleep you unzipped his pants. You touched his genitals with your hand. He woke, stopped you from touching him and fell asleep again. Later that night W woke to find you touching his genitals and performing oral sex on him. You had pulled his pants and underpants down. You told W if he told the Police what had happened, you would go to jail.

[6] On another occasion W helped you with your paper round. He fell asleep in your car. He woke to find you touching his genitals over clothing.

[7] W was 12 when you committed these offences—but only just. He turned 12 in September 2013 and the offending occurred between then and the end of that year.

Offending against L and M

[8] The offending against these two victims occurred between 1 January and 3 September 2014. L was approximately four years of age; M approximately eight. L and M are brothers.

[9] You were a friend of the boys' mother. She struggled to care for them and their younger sister. Consequently, L and M spent much time with you.

[10] When L was in your bed you would pull his pants down and fondle his genitals. L said this happened every day. The charge you were found guilty of is a representative charge, meaning you engaged in a pattern of conduct with L by touching him in the way he described.

[11] On one occasion you did likewise to M.

[12] In relation to these victims, the contact was skin on skin.

Offending against A and N

[13] On 9 August 2014 you went to a birthday party of a colleague's 15-year-old son. You were offered a bed for the night as you had been drinking. Your

colleague's two young daughters were sleeping with other children in the lounge. During the night you went into the lounge.

[14] You approached A, who was eight, and the daughter of the colleague who had invited you to the party. She woke to find you giving her "slobbery" kisses. She asked you to stop. You would not. You hugged A, rubbed and squeezed her breasts, touched her stomach and rubbed her genitalia. Most of your touching was over clothing, save for some around the skin of her stomach.

[15] You then approached the older daughter N, who was nine. You kissed her on the forehead and rubbed her genitalia over clothing.

[16] The next morning the girls' father learned you had been in the lounge. He asked you to come to the home. You did. You told the father you had heard the girls crying and went only to comfort them. Your account was challenged. You then said you had had something to drink and could not remember what happened. You were challenged further. You then said you had done something "really wrong". You apologised for hurting the family.

[17] Police were contacted. You went to trial in relation to all five victims.

Starting point

[18] Your offending has a number of aggravating features, meaning things that make it more serious.

Victim vulnerability

[19] All of the victims were vulnerable by reason of their age. W, L and M were also vulnerable because they came from homes in which people were struggling, for a variety of reasons, to care for them. You knew that. Some of the victims were asleep when you committed these offences.

Breach of trust

[20] You were friends with the parents or caregivers in relation to W, L and M. They trusted you to look after their children. And they were often in your care. You abused the victims' trust and the trust of their families.

[21] You had not previously met A or N, but you had been invited to a party at their home. So, you were a guest. In this way, you breached this family's trust too.

Premeditation

[22] There is a clear element of premeditation to many of your offences in that you *encouraged* children to be in your care, to create opportunity for sexual offending.

Victim impact

[23] At least four of the victims have suffered emotional harm:

- (a) There is no victim impact statement before from M.
- (b) W now finds it difficult to trust others. He describes feeling "super angry". He also describes embarrassment and not wanting to talk about what happened.
- (c) L says it is hard to talk about his feelings in relation to the offending. He too would get "super angry". He describes also feeling "angry and sad".
- (d) A is more phlegmatic. She says she has not been "too bad emotionally".
- (e) N, however, says things "got to the point [where] I wanted to cut myself". Unsurprisingly, she wonders why it would be that someone would do this to children or young people.

[24] It is clear some victim harm is ongoing. You caused this harm.

Methodology

[25] The most serious offence before me is the offence of sexual violation by unlawful sexual connection in relation to W.⁵ There is a large measure of agreement as between the Crown and your lawyer in relation to the starting point for this offence, and for your offending overall. For this reason I am not going to trouble you with detail. Also, and as foreshadowed, the real issue in your case is whether you should be sentenced to preventive detention.

[26] To paraphrase the parties' positions, the Crown submits I should adopt a starting point of six to seven years' imprisonment for all of the offending in relation to W, uplift that by one year for the offending in relation to the other victims, and then uplift the figure again by another year for unrelated sexual offending, which I will come to shortly.

[27] On your behalf, Mr Bean contends the sexual violation offence warrants a starting point of seven years on its own, with an uplift of two to three years for the remaining offending, and then a further uplift for your earlier sexual offending, all subject to totality.

[28] Consequently, there is consensus the global starting point lies between eight and 10 years' imprisonment. Indeed, Mr Bean responsibly acknowledges a higher global starting point could be sustained.

[29] I adopt a starting point of six years' imprisonment for all of the offending in relation to W, and uplift that by two years for the offending in relation to the other four victims. Had the other offending stood alone, a starting point of at least three years' imprisonment would have been required.

[30] You have previous convictions for similar offending. In 1998 you were convicted of indecent assault in relation to a 10 year old girl. You were in a relationship with that victim's mother. You were then quite young—24 or

⁵ *R v AM* [2010] NZCA 114, [2010] 2 NZLR 750.

thereabouts. The mother became ill and left the home to stay elsewhere. You remained to look after the children. You watched a pornographic video with the victim. You slept in the same bed as her and touched her genitalia over clothing. The charge was representative in nature. You defended it.

[31] You were sentenced to a term of 12 months' imprisonment and nine months' supervision. You were directed to undertake any courses as directed by the Probation Service to address potential difficulties with paedophilia.

[32] You later committed sexual offences against three young girls between 2005 and 2007. The first victim was seven. You occasionally spent the night with her in a tent or at her home. You touched her over clothing on her bottom and thighs. On one occasion, you put your hand down her pants and underwear and touched her buttocks and genitalia.

[33] The second victim was also seven. You fondled her breasts and put your hand inside her pants and underpants on her buttocks. You also touched her genitalia through clothing when helping her onto a horse.

[34] The third victim was nine. You blew raspberries on her chest and stomach. You were convicted of five charges of doing an indecent act on a girl under 12. You defended all of these charges too.

[35] On 22 July 2008 you were sentenced to a term of two years and three months' imprisonment. You were then 34. The Judge who dealt with your case warned you, you were at the "crossroads". He told you if you did not seek and obtain treatment for your underlying problem you would continue to pose "a substantial risk to young girls" with consequential risk of a "substantial sentence of imprisonment". The Judge said he felt it necessary in his remarks to address the point "for the benefit of the Parole Board and any others who may consider [your] case in the future".

[36] And so here we are.

[37] An increase to your sentence is required because you continue to commit sexual offences against vulnerable people. I increase the starting point by 18 months to arrive at a global starting point of nine and a half years' imprisonment. The figure remains below the top end of the range identified by Mr Bean.

Mitigating features

[38] You are 43 years of age. Before being remanded in custody you were self-employed—you mowed lawns and delivered newspapers. You say you have a great deal of family support and support from friends.

[39] You continue to deny the offending.⁶

[40] In truth, there are no mitigating features.

Preventive detention

[41] Preventive detention may be imposed when a person is convicted of a qualifying offence, was 18 years or over at the time the offence was committed, and the Court is satisfied the offender is likely to commit a qualifying offence after serving a finite sentence.

[42] There is no dispute the first two of these conditions are met. The question is whether you are likely to commit a qualifying [violent or] sexual offence on release. Even then a discretion remains. Preventive detention is not a sentence of last resort, but it is exceptional. A long but determinate sentence is preferable when it would adequately protect the community.

Risk of commission of a qualifying offence?

[43] The author of the pre-sentence report describes you as “a manipulative and calculating offender who ingratiates himself with people who have children, offering friendship and support, and access to victims”. The author considers your victim

⁶ In early 2016 the defendant pleaded guilty to five charges. He was later given leave to vacate those pleas, which he did. He was tried on all seven charges in May 2017.

profile has broadened, and you pose “a very high risk of re-offending and harm to others, specifically children”.

[44] Mr Robert Ngamanu, a clinical psychologist, has made a number of assessments in relation to your risk of re-offending. He believes there is a very high risk of you committing a further sexual offence. Mr Ngamanu notes you were assessed by a special treatment unit for child sexual offenders in 2009. It was then concluded you were unsuitable for group therapy. This was because of your “refusal to take responsibility for sexual offending against prepubescent girls”. You were described as being sarcastic or quiet during group sessions, and as failing to contribute to them. You said you were uncomfortable with different therapists and you were only attending because you were required to do so by virtue of your sentence.

[45] Mr Ngamanu explains you have not, since then, completed any individual or group therapy with a psychologist in connection with the Department of Corrections. Mr Ngamanu says you have personality traits consistent with psychopathy and deviant sexual arousal. These may yet imply a yet higher risk of sexual re-offending.

[46] You have also been examined by Dr Majeed, a consultant forensic psychiatrist. Dr Majeed considers you present with “a significant psychopathology of paedophilia”. He notes your denial of this and earlier sexual offending would “negatively impact” on your participation in any future sex offender treatment programmes. Dr Majeed considers you present with a “high risk of sexual re-offending”.

[47] Given these reports, your conviction for sexual offences in 1998 and 2008, and the offences before me, I am satisfied you are likely to commit a qualifying sexual offence following release from even a lengthy finite sentence.

[48] My discussion thus far has captured the pattern of your offending, the harm caused by it to the community, your risk of re-offending, and your failure thus far to address the root cause of your offending: a propensity, disposition or inclination to

commit sexual offences against children and young persons.⁷ This brings me to the very important principle a long finite sentence is preferable when it would provide adequate community protection.⁸ Unsurprisingly, Mr Bean stresses it. He submits a long finite sentence would be adequate to achieve this purpose. He reminds me your earlier sentences were quite short and seeks essentially, on your behalf, a final chance for a sentence short of preventive detention.

[49] I consider preventive detention is necessary and no other sentencing response would be adequate in your circumstances. First, you pose at least a high risk of re-offending. Second, you demonstrate no inclination for reform. Third, you lack insight. Fourth, unlike preventive detention a finite term offers limited incentive for reform.

[50] The associated minimum period must be the longer of that reflecting the gravity of your offending, or that required to protect the public.⁹ A finite sentence of nine and a half years' imprisonment would have attracted a minimum period of six years and two months, having regard to the sentencing imperatives of denunciation and deterrence. That would have been the longest available minimum period. A longer period is required in this context, having regard to the need to protect the public. The additional period required is difficult to quantify. As I have said on another occasion in the same context, there is danger of "overreach".¹⁰

[51] Standing back, I consider the appropriate minimum period of imprisonment is seven and a half years. I reach this conclusion because your offending shows no sign of abating. It now extends to young boys. And you pose at least a high risk of re-offending. Let me be plain. You have a habit of befriending others, and then committing sexual offences against their children or children in their circles. You have resisted help even though you have been on notice since at least 2008 you need help to overcome your own impulses and tendencies. In short, you have become your own enemy.

⁷ Sentencing Act 2002, s 87(4)(a)–(d).

⁸ Section 87(4)(e).

⁹ Section 89(2).

¹⁰ *R v Gotty* [2017] NZHC 1102 at [36].

Child Sex Offender Register

[52] Each of your offences is a qualifying offence under the Child Protection (Child Sex Offender Government Agency Registration) Act 2016. The charge of sexual violation by unlawful sexual connection is a Class 2 offence. The remainder are Class 1 offences.

[53] Because I will impose a sentence of imprisonment on you for qualifying offences under this Act, you will become a registered sexual offender. This means your name and information in relation to your offending will be placed on the Child Sex Offender Register. It means also you have initial and ongoing reporting obligations under the Act. It is an offence to fail to comply with your reporting obligations. It is also an offence to apply to register a change of your name without first having obtained the written approval of the Commissioner of Police.

[54] Your reporting obligations will begin when you are released from prison—whenever that may be. You must comply with these obligations for the remainder of your life. And, you will remain on the register for rest of your life.

[55] A Registrar of this Court will give you a written notice of your obligations and the penalties for failing to comply with that Act.

[56] Please stand.

Sentence

[57] Mr Grey, on each charge I sentence you to preventive detention. You must serve a minimum period of seven and half years.

[58] You may stand down.

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Downs J