

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

T.9/93

R E G I N A

v.

PETER HUGH McGREGOR ELLIS

Sentence: 22nd June 1993

Counsel: B.M. Stanaway for Crown
R.A. Harrison and Ms Siobhan McNulty for Prisoner

SENTENCE OF WILLIAMSON J.

PETER HUGH McGREGOR ELLIS

The circumstances of these 16 crimes, the effects upon the child victims; and your own personal background and history, have to be weighed up in arriving at an appropriate overall sentence.

Two points must be stated clearly and firmly.

First, the jury's verdicts of guilty were the result of a careful consideration of detailed evidence and submissions presented by both sides. Their verdicts were obviously correct.

Secondly, it would have greatly assisted the child victims of these crimes, and indeed yourself, if you had faced up to the truth about yourself and sought help at an early stage.

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The jury were in a unique position in this case. Unlike almost all of those who have publicly feasted off this case by expressing their opinions, the jury actually saw and heard each of the children. They also heard your own evidence and that of the other former Christchurch Civic Creche workers. The jury disbelieved you. They believed the children and I agree with that assessment.

I am aware from the depositions and the evidence that a number of other children complained of sexual abuse by you, but that for various personal reasons it was not wished that they give evidence at the trial and the Crown did not proceed on charges in relation to them. In view of the evidence that was given at the preliminary hearing and the trial, there must be a grave suspicion that there were a number of other acts of abuse in addition to those contained in these 16 crimes. I completely disregard those suspicions in sentencing you. The sentences are based on the acts which you have been proved to have done and not on suspicion of guilt of other offences with which you have not been charged or upon which you have been acquitted.

As well as considering the circumstances of these 16 offences, it is necessary to stand back and to consider the total criminality involved.

The sixteen convictions are made up of three of sexual violation for which Parliament has provided a maximum sentence of 14 years' imprisonment. Eight relate to indecent assault for which the maximum is 10 years' imprisonment. Five relate to the doing or inducing of indecent acts on children under 12 years of age for which the maximum is also 10 years' imprisonment. Those maximums, in themselves, indicate the gravity of this type of offending.

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The three crimes of sexual violation all relate to unlawful sexual connection between your penis and the mouths of three children. Two of these occurred at the Creche and one at an unknown address. I do not intend to repeat in sentencing the detailed circumstances of each offence because these were fully dealt with at the trial. Suffice to say about the others that four of the crimes of indecent assault involved the touching of three children's vaginas or anus with your or an associate's penis. Two were at the Creche and two were at an unknown address. The other four crimes of indecent assault involved you using your hand to touch the vagina or anus of three children. Three of those offences occurred at the Creche and one at a child's home.

Of the 5 crimes involving indecent acts, 2 concerned the bathing of children involving touching them and having one of them masturbate you. One of the crimes involved a child touching your penis and the remaining 2 concerned you urinating on two children, as well as in one case placing your penis in the mouth of one.

Part of my task is to consider aggravating and mitigating factors. Counsel have urged on me various points concerning those factors. Although the Crown has referred to eight aggravating factors, in my view there are four principal ones.

First of all, the main victims were very small children.

Secondly, the offences were committed over a long period, that is between December 1986 and May 1991.

Thirdly, you were in a position of special trust.

Fourthly, crimes of this type are prevalent.

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I will deal with three of those factors in a little more detail. The first of them, that the victims were small children. The 7 children involved in these crimes are not the only ones to suffer because of your conduct. They are certainly the principal victims. At the time of the offences they were aged 3-5 years, that is very small children, without the ability or skills to protect themselves. Many of the effects of sexual abuse on these children were the subject of evidence at the trial and these effects have been summarised and brought up to date in detailed victim impact reports that have been presented to the Court and which I have read. These recount how as the significance of those actions was appreciated by the children they suffered the obvious repercussions of headaches, tummy aches, night terrors, fear and anxiety and sleep disturbances, but also some of them show signs of what might be termed psychiatric disorders connected with sexual abuse such as depression, lack of confidence, self-esteem, as well as eating and sexual disorders. The children have had some therapy, as Mr Harrison urges on me, and may need more which hopefully will do a lot to alleviate the symptoms.

The victim impact reports draw attention to the fact that the long term effects of such offending is difficult to determine with any accuracy. In the Court's experience over a number of years many complaints of admitted sexual abuse only arise when victims are in their twenties or thirties and they have had a breakdown or some other mental illness which has prompted counselling. Also the Court's common experience is that a number of offenders standing in your position tell the Court that they were sexually abused as a child. Part of the seriousness which arises from the children's young age is that it is very difficult to prove

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offences involving such young victims. When they have been proved, then the Court must act to deter others.

The second factor, that is the position of trust. There is no doubt that people trusted you. The children did and parents did. The fellow workers at the creche trusted you. If you had not been trusted, or in some ways loved, then, of course, it would not have been possible for these offences to have happened. The crimes which you committed are flagrant although insidious breaches of that trust. Perhaps it is not surprising that some of your well publicised and televised creche workers are still claiming that you would not have had the opportunity to be able to commit these crimes even though the evidence that the Court heard, including your own, realistically established that there were such opportunities.

According to the pre sentence report a former tutor described you as being regarded as the "darling" of the Child Care Centre by some parents and some of your colleagues. It seems that your nice side and your good attributes enabled others to overlook your peculiar manner, your lifestyle, your drinking, and your inappropriate sex talk. Those persons who trusted you are in fact all victims of these crimes. The children, the parents, the creche workers, the community have all suffered because of what you have done. The closing of the Civic Centre was perhaps an inevitable result of your conduct and of the suspicions naturally surrounding others associated with you.

The final aggravating factor I want to mention is that of prevalence because the necessity to impose deterrent sentences for this type of conduct has been emphasised recently in a number of cases. It is said that these offences rob children of their innocence and some of the joy

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of their childhood. Seven years ago the Court of appeal emphasised this point to sentencing Judges by saying individual Judges may be sceptical about the prospects that heavy sentences would deter other potential offenders, but that the purpose of punishment could not be safely ignored by those Judges.

In your case it is the combination of these aggravating factors that I have outlined which results in these crimes having to be treated as very serious ones of their type.

On the other hand the principal mitigating factors that your Counsel has urged on me are:-

First that there is no evidence of overt violence producing physical injuries on these children.

Secondly, you have no previous record of sexual offending.

Thirdly, many of the parents and creche workers were attracted to you and impressed at your enthusiasm and your skills in child care work.

Fourthly, imprisonment will be difficult for you.

You are aged 35. You have had a number of jobs. The pre sentence report describes how in 1983/84 you had drinking and stress problems which resulted in your being assessed at the Mahu Clinic. The Probation Officer refers to your statements of spending \$50 a week on alcohol. In July 1986 you were sentenced to 80 hours community service

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for misleading a Social Welfare officer. It was part indeed of your community service placement that you first went to the Civic Creche. You are described in this report as being effeminate and bisexual. The report assesses you in this way. It says:

"The overall picture gained of Peter Ellis is that of an outgoing, uninhibited, unconventional person given to putting plenty of enthusiasm and energy into his work and social activities, sometimes to the point of being risque and outrageous, thus opening himself up to being compromised or being seen to exercise poor judgement. It appears, however, that he was able to temper the more effervescent side of his nature by being caring, sensitive and understanding in such a way that both adults and children were attracted to him."

I have read this report carefully. I have also read the large number of letters and references that have been supplied to the Court. These come from your family, from friends, from children who attended the Creche, from colleagues and from former teachers and acquaintances. Many describe your obvious good and creative abilities to play with and look after children. They speak of your positive contributions to the Creche. They speak of your flamboyance, your gentle manner on occasions, your sense of humour. Clearly you have a supportive family and that will be important to you in the future. Others who have written letters just cannot accept your guilt. Indeed some may not appreciate that sexual abuse is not necessarily the act of a cruel person but rather that of a perverted person. Despite the jury's verdict, many of those who have written letters want the Court to wave a magic wand and change the hard fact, for them, that the jury have found you guilty.

My task is to sentence you and to give effect to those aggravating factors and mitigating factors which I have outlined. I have got

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to consider the individual penalty for each of the 16 crimes as well as the total criminality. To mark the gravity of the offending overall; and the continuing nature of such offending involving young children by a carer, I will order that some of the sentences are served cumulatively or consecutively.

I have divided the offences into four categories.

The first category is the 3 offences of sexual violation, (that is counts 18, 20 and 27). The sentence I impose is one of 4 years' imprisonment. Those sentences are to be concurrent with each other.

The second category is one of 2 offences of indecent assault involving the placing of your penis on the vagina or anus of a child and 1 indecent act involving your placing your penis in the mouth of the child, (that is counts 6, 21 and 22). The sentence imposed is one of 3 years' imprisonment. These sentences are to be concurrent with each other but cumulative on those in the first category.

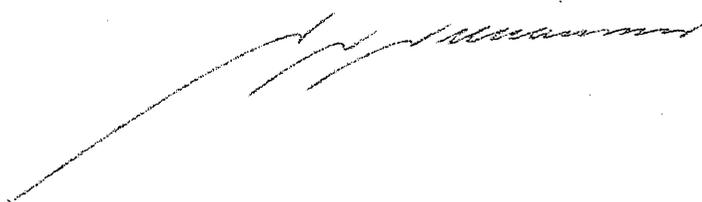
The third category are 6 offences being 4 of indecent assault and 2 of indecent act involving the touching of a child's vagina or a penis or urinating on a child. (These are counts 1, 2, 3, 4, 9 and 28.) The sentence I impose is one of 2½ years' imprisonment on each. Those sentences are to be concurrent with each other and concurrent with those sentences in the second category.

The fourth category are the 4 offences committed at an address outside the Creche, being 2 of indecent assault involving you putting your penis against a child's anus and the encouraging of another person to place

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his penis against a child's vagina, (that is counts 17 and 23;) and 2 of indecent acts during bathing with 2 children, (that is counts 10 and 16). I impose a sentence of 3 years' imprisonment on each. Those sentences are to be concurrent with each other but cumulative on those in the second category.

The effect is a total sentence of 10 years' imprisonment. From the 10 years I deduct 3 weeks to cover the period that you have already spent in custody.

A handwritten signature in dark ink, appearing to be a name with a surname and a first name, written in a cursive style.

J.