

R v Wilson & R VAMOHANGA. 6.7.89

GGH

SET 3

IN THE COURT OF APPEAL OF NEW ZEALAND

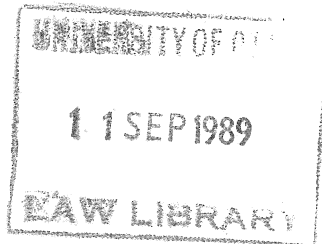
C.A. 362/88

THE QUEEN

R

v.

GUY NICHOLAS WILSON



C.A. 404/88

THE QUEEN

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v.

TERRENCE CRAIG AMOHANGA

Coram: Casey J (presiding)
Bisson J
Wylie J

Hearing: 20 June 1989

Counsel: Miss Kristy P McDonald for Crown
C J O'Neill for Appellant

Judgment: 6 July 1989

JUDGMENT OF THE COURT DELIVERED BY CASEY J

Both these applications for leave to appeal against sentence were heard together, as they involved lengthy sentences for sexual violation imposed on young men of 17. Wilson was sentenced to concurrent terms of 11 years on counts of abducting a young woman, rendering her incapable

of resistance by violent means, rape (2), unlawful sexual connection and theft. He pleaded guilty on arraignment. Amohanga was sentenced to concurrent terms of 9 years on charges of rape and aggravated robbery of a 77-year old widow in her own home. Both complain that the sentences are manifestly excessive.

WILSON

The complainant was 22 and lived in Morrinsville. She paid a brief visit to a public toilet at about 11 pm and on returning to her car to drive away she was grabbed by two men (Wilson and Topia), dragged over to the back seat and made to lie down, being punched and threatened. She was ordered to take her clothes off, which she did to save further hurt and was forced to have intercourse and oral sex, being punched on the side of the head at the same time. Wilson then drove the car to a deserted road and, at Topia's invitation, he came over to the back seat and made the complainant have anal and vaginal intercourse and oral sex with him by placing his penis in her mouth.

Topia then ran off and Wilson allowed the complainant to dress and made her accompany him while he drove the car north, stopping on one occasion to force vaginal sex on her again. They finally arrived at Auckland. The girl was too frightened to try to escape. At the end of the journey he took her engagement ring and two signet rings and watch and

gave them to a girl who had joined them; the latter eventually drove the complainant to an address where she was allowed to clean herself up and she was dropped off at Papatoetoe about 3.45 am. Her ordeal was close to 5 hours.

Wilson was located the following day and admitted the offences to the police stating that he and Topia had stolen a car to drive to Auckland and found the complainant there after they got in. After Topia had hit her and had sex he had his turn and he then drove to Auckland, raping her again on the way. He said he did it because it was just tempting. We were informed that Topia pleaded guilty at his trial after his statement was admitted and he was also sentenced to 11 years' imprisonment. He was 25, but his involvement could be regarded as somewhat less than Wilson's because he left before the former drove on up to Auckland, raping the girl again on the way.

The sentencing Judge described this as a bad case of rape. He emphasised the disgusting indignities inflicted on the young woman and said her life in the community had been destroyed. The Victim Impact Report disclosed the serious effect of this conduct on the complainant, who had lived and worked in the locality for most of her life and was to be married about six weeks afterwards. She suffered extensive bruising on her face and other parts of her body and accompanying pain, but those injuries have healed. Her identity as the victim of these offences became known in the

district and she felt unable to remain there because of her embarrassment and shame over what had happened. She left to make a new life in Australia. The engagement was broken off and at the date of the report (13/6/88) she had understandably not recovered from her experiences and still felt fear.

Wilson is the second youngest in a family of 13 and in the pre-sentence report his upbringing was described as "undisciplined and lax, resulting in low self esteem and anti-social behaviour." In 1986, when he was only 15, he made three court appearances, being convicted of some 33 offences ranging over burglaries, theft, wilful damage, car conversion, receiving and escaping from custody. The report states he was beyond the control of the Department of Social Welfare; he was put under supervision, and then sentenced to periodic detention, but he was convicted of breaches. In March 1987 he was sentenced to corrective training for a further spree of offending, this time including obstructing police, car conversion and reckless driving, possession of cannabis and possession of a firearm, burglary, receiving, wilful damage and theft. On release from that sentence last May he received some support from other members of his family, but it seems that although concerned about him they are unable to exercise any effective control.

His parole officer described him as "totally undisciplined with scant regard for the mores or morals of

society" and noticed his increasing involvement with the mongrel mob. Wilson's response to the probation officer about his future after release from his present custody was that he would probably remain in the Auckland area "and stay pretty close to other members of the mob". Not surprisingly the report concludes with the observation that there is no reason for optimism concerning his future.

We received a number of written representations including an eloquent appeal from his mother for leniency and proposals from Maatua Whangai o Heretaunga offering a rehabilitative programme. We have read all this material, but members of the applicant's family and friends who were present at the appeal hearing will understand that for offences of this gravity, such an alternative is out of the question. In his very practical submissions to the Court, Mr O'Neill acknowledged that a substantial prison sentence had to be imposed. He took us through a number of cases in which this Court had discussed the appropriate levels of sentencing for rape and associated offences, with appropriate allowances for aggravating and mitigating factors. The sentencing Judge made a brief reference to these and concluded - "It is only your youth and the fact that you pleaded guilty which deter me from imposing the maximum of 14 years. You are imprisoned for 11 years."

The Judge may have been justified in his view that the maximum sentence of 14 years would have been appropriate for

an adult offender displaying the lack of remorse and concern apparent in Wilson's reported reactions, and without an early plea of guilty. In this case he can claim little credit for his plea not made until arraignment, even though he now asserts that his previous lawyer was responsible for that delay. It would be difficult to envisage a worse case than the deliberate abduction of this total stranger, the beating and other assaults and the rapes and other sexual indignities inflicted on her for the space of nearly five hours. The victim impact report amply demonstrates the harm that so often arises from such conduct. The only real issue is whether the Judge made sufficient allowance for Wilson's youth.

In CA 265/88; 2 December 1988, this Court dealt at some length with the problem of sentencing juvenile offenders, recognising that in appropriate circumstances regard could properly be paid to their better prospects of reform and rehabilitation at an earlier age. But it must be accepted that some offences are so appalling that any reduction in sentence made primarily in the offender's interests will be seen as an outrage to public conscience. To say so is not to condone the views of those who insist on a harsh sentencing policy as a matter of course; this Court has previously pointed out that simply increasing already long sentences adds nothing to their deterrent effect, and can very often result in a youthful offender emerging from prison a more hardened criminal than when he went in.

Having regard to this young man's past record since the age of 15, when he has simply been running wild in the community; and having regard to his settled association with the mongrel mob, we need not be too concerned about avoiding any further deterioration. His past history points to the need for him to be locked up for a lengthy period simply to protect the public from his future criminality. The bleak fact is that the prospects of any reform or rehabilitation are remote. We say this with every respect for the well-meaning proposals from his family and support groups. But they have been unable to exercise any real control over him. In one of the letters from a responsible Maatua Whangai worker in the Social Welfare Department we were given a sad picture of a split family, most of whom have rejected Wilson and their parents. It is impossible not to feel sympathy for his mother who has tried to stand by him. However, even she seems unable to realise the full enormity of his conduct; in her letter to us she asserted that he did not touch the complainant at all, and the other man was entirely to blame. Mr O'Neill informed us his client could not associate himself with those comments.

We find it hard to see any redeeming features warranting a greater reduction other than that allowed by the Judge from the maximum sentence which this case would otherwise have deserved. Some allowance must always be considered in the case of young offenders, to take into account their lack

of maturity and the hope - perhaps a vain one in this case - that they have not become so set in their ways that reform or rehabilitation is out of the question. The Judge made an appropriate reduction and the sentence of 11 years' imprisonment, although severe, cannot be regarded as excessive. This Court has accepted the need for long sentences for young offenders guilty of very serious crime - see R v Haha and R v Waina (CA 201/86, CA 311/86; 13/5/87) where terms of 12 years and 10 years were imposed on two youths who attacked and badly beat a young man and raped and sodomised his two young women companions in an episode lasting about an hour.

However, there is one matter which emerged during the hearing and perhaps was not pointed out to the sentencing Judge. Wilson had spent 9 months in remand custody prior to sentence and no mention was made of this; indeed, he may have been misled by a comment in the pre-sentence report that he was on bail. He is entitled to have this taken into account and we do so by reducing the overall term to 10 years. Some distinction is also necessary to mark the lesser gravity of the theft count.

Leave to appeal is granted and the appeals are allowed and all the sentences are quashed; in lieu thereof Wilson is sentenced to 10 years' imprisonment on each of the counts of abduction, rendering incapable of resistance, and sexual violation, and to 3 months' imprisonment on the theft count, all sentences to be concurrent.

AMOHANGA

The summary of facts discloses that this young man rang the front door bell of the complainant's house at about 8.50 pm on 18 November 1988 and when she answered in her nightgown he enquired about an address which she gave him. He then went to the back of the house, took a screwdriver from the garage and came in through a window. He attacked the complainant, pushing her to the ground, and he beat her about the head and body with the screwdriver and raped her. He also demanded money and threatened to kill her unless she gave it to him. She told him where her purse was, and he took it away and stole \$20. When interviewed on 20 November by the police he admitted these facts and said he did not know what he was doing because he was "out of it on cocaine." He claimed that he had gone to the address to commit a burglary, and although aware that the complainant was at home he denied entering with the intention of rape and said the idea only occurred to him when he confronted her.

The complainant is a 77-year old woman, recently widowed and living alone. She sustained extensive bruising to her head and neck and a laceration behind her right ear from the screwdriver and also received a cracked rib. She was admitted to hospital for some days and discharged into the care of her daughter. As a result she has partial deafness in her right ear and there are, of course, serious emotional consequences.

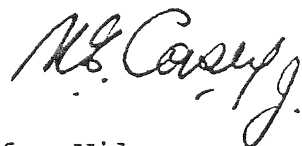
Amohanga pleaded guilty at the first opportunity and a pre-sentence report discloses the usual depressing history of family problems, with his parents separating when he was 11. His school years were marked by chronic truanting. After a shaky start in employment, he was employed by a contractor at the time of the offence and was described as a very good worker. He has lived with a young woman since 1986 and became a father at 15. She describes him as a good father but there were problems with his excessive drinking and cannabis use. He has a number of dishonesty offences for which periods of supervision were ordered and his response to these was described as poor. The probation officer considered he showed little insight into his behaviour and offending but appeared to feel some remorse for the victim.

In the review of the general level of rape sentences undertaken by this Court in R v Puru [1984] 1 NZLR 248, rape of elderly women in the apparent security of their own homes was described as a class of case with "particularly aggravating features". In R v Te Pou [1985] 2 NZLR 508 this opinion was repeated and confirmed and the young man in that case - Tekii (a Cook Islander aged 22) - was sentenced to 10 years' imprisonment. This was seen as out of line with other sentences of 7 and 8 years which were considered at the same time for rapes committed by others with different aggravating circumstances. Making allowance for Tekii's early guilty plea, and his very remorseful attitude

described by the probation officer, his sentence was reduced to 8 years. It was accepted that he entered the house with the intention of burglary only, and decided to rape the 81-year old occupant when he saw her alone inside. Although he inflicted other sexual indignities on her, his conduct is matched by Amohanga's vicious attack.

The sentencing Judge referred to Amohanga's youth but rightly emphasised that his responsibility was to reflect the "absolute abhorrence of the entire community of those who will violate the sanctuary of homes and subject people, who are entitled to the protection of society, to any form of indignity." He considered the appropriate sentence would have been 11 years' imprisonment on each of the charges, but he reduced this by 2 years for the plea of guilty in arriving at the 9 years imposed. While this may be seen as on the high side by comparison with the approach taken in Tekii's case, we are certainly not prepared to say it was beyond the limits of a properly exercised discretion in this field, having regard to the age of the victim and the brutal nature of the assault. The associated charge of aggravated robbery was so much a part of the episode that we think the Judge was right to impose a similar concurrent sentence of 9 years on that count as well.

Amohanga's application for leave to appeal against these sentences is dismissed.



Solicitors: Crown Solicitor, Auckland, for Wilson
and Amohanga