

**NOTE: PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF
COMPLAINANTS PROHIBITED BY S 139 OF THE CRIMINAL JUSTICE
ACT 1985.**

IN THE COURT OF APPEAL OF NEW ZEALAND

**CA246/2009
[2009] NZCA 343**

THE QUEEN

v

MAAKITI JOSEPH TIPENE

Hearing: 30 July 2009
Court: Hammond, Ronald Young and Simon France JJ
Counsel: H T Young for Appellant
M E Ball for Crown
Judgment: 5 August 2009 at 11 am

JUDGMENT OF THE COURT

The appeal against sentence is dismissed.

REASONS OF THE COURT

(Given by Ronald Young J)

Introduction

[1] At 6.30 a.m. the appellant went to a South Island campground. He was masked. He entered the male and female victims' tent with a knife. He stole money from them and then sexually violated the female in a variety of ways. Finally, the appellant threatened to kill them and left.

[2] After a plea of guilty to a variety of offences, Judge Phillips adopted a starting sentence of fifteen years' imprisonment, deducted one third for his early guilty plea and imposed a final sentence of ten years' imprisonment with a minimum non-parole period of six years and six months.

[3] The appellant says the Judge adopted too high a starting sentence and as a result his final sentence was manifestly excessive.

[4] The appellant pleaded guilty to:

- a) sexual violation by rape;
- b) sexual violation by unlawful sexual connection with the female victim (forcing her to perform oral sex on him);
- c) sexual violation by unlawful sexual connection with the female victim (inserting his hand into her genitalia);
- d) sexual violation by unlawful sexual connection with the male victim (forcing the female victim to perform oral sex on a male victim);
- e) two charges of kidnapping relating to each victim;
- f) two charges of threatening to kill relating to each victim; and
- g) aggravated burglary with a knife.

Discussion

[5] As to the facts the sentencing Judge summarised them in this way:

[4] At 6.30 you went to the camp site. You used the pillow case as a face mask. You went into and entered the awning by unzipping it. You woke the victims. You used a knife that you had with you to threaten them. You demanded money. They in fact gave you directions where you could find their money (the \$750) and if that is what you were there for you could then have left but you did not. You pulled the sleeping bag off the victims. You made the male victim move. You took your trousers off. You turned the female victim onto her back and you forced your penis into her mouth forcing her head to go backwards and forwards. She had opened her eyes against your explicit instructions and seen your face; she felt the knife you had on her ankle or lower leg and she thought she was going to die because she had seen your face. She was extremely fearful, felt ill. This action on your part went on for a few minutes. You began then to rub her in and around her vagina in a painful way. You then raped her. You then required her to perform oral sex on you again, again using the knife. You then told her, demanded her, to perform oral sex on her partner and then oral sex on you again. You then had vaginal intercourse with her for a second occasion from behind her. You required her to perform oral sex on you again. You spat at her near her vagina area. You put your hand into her vagina. You licked her vagina as she had to continue to perform oral sex on you. You pulled your penis from her mouth and in front of her masturbated putting it back into her mouth and ejaculating in her mouth. You then told them you would 'kill them' if they did not do what you had told them to do, you taking each person around the throat to make sure that they understood and realised that the threat you had made was real. You tied their wrists together and left. The male victim rang the police.

[6] The thrust of the appellant's case is that compared with other similar cases a starting sentence of no more than thirteen years should have been imposed resulting in a final sentence of no more than nine years' imprisonment. In particular the appellant says cases such as *R v McEwen* HC WHA CRI-2006-027-2149 12 July 2007, *R v Singh* CA348/05 26 April 2006, *R v Clarken* HC AK CRI 2005-055-6760 3 November 2006 and *R v Christie* [2008] NZCA 211 illustrate the starting point should have been thirteen years' imprisonment.

[7] As has been often observed in this Court it is difficult to make a close comparison of sentences when the facts of other cases inevitably differ: *Singh* at [12].

[8] We agree with the Crown's submissions that in cases involving serious multiple sexual offending, with additional aggravating features such as invasion of the victims' house, unlawful detention, the threat and use of a weapon and humiliating and degrading conduct, sentences of between thirteen and twenty years have typically been imposed.

[9] We are satisfied the starting sentence of fifteen years' imprisonment and the ultimate sentence of ten years' imprisonment was well within the range available to the Judge. This was extremely cruel offending. It was premeditated. There were two victims. The appellant armed himself with a knife and a disguise. It effectively involved an invasion of the home of the victims when the appellant entered their tent.

[10] The sexual abuse was humiliating, prolonged and involved two rapes. The appellant threatened the victims' lives and had the immediate capacity to carry out the threat. The male victim was forced to witness his girlfriend's rape and other violations. This was humiliating for both victims. Finally, the appellant robbed the victims. These events took approximately 45 minutes. The impact on the two victims was unsurprisingly profound. The physical injuries to the female victim were still present months after the rape. The psychological effect on both victims is likely to be life long. The facts of this case placed it in the middle of the range.

[11] We are satisfied, therefore, that both the starting sentence of fifteen years' imprisonment and the final sentence of ten years' imprisonment was not manifestly excessive and well within the range available to the Judge. The appeal against sentence is dismissed.

[12] The sentencing notes of the Judge recorded that a minimum period of imprisonment of seven years was imposed. This was more than permitted (s 86(4)(a) Sentencing Act 2002). After sentencing, the Judge recognised his error, cancelled the seven year period and imposed a minimum period of six years and six months. No challenge is made to this aspect of the sentence.

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