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COMPLAINANT PROHIBITED BY S 139 OF THE CRIMINAL JUSTICE  
ACT 1985.**

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**CA224/2012  
[2012] NZCA 521**

<b>BETWEEN</b>	<b>ROBIN PETER ABRAHAM</b> Appellant
<b>AND</b>	<b>THE QUEEN</b> Respondent

Hearing: 30 October 2012

Court: Ellen France, Allan and Lang JJ

Counsel: C J Tennet for Appellant  
M R Davie for Respondent

Judgment: 9 November 2012 at 10 am

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**JUDGMENT OF THE COURT**

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- A The application for an extension of time to appeal is granted.**
- B The appeal against sentence is dismissed.**
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**REASONS OF THE COURT**

(Given by Lang J)

## **Introduction**

[1] Mr Abraham pleaded guilty in the District Court to two representative charges of sexual violation by rape. On 16 September 2010, Judge Garland sentenced him to concurrent terms of ten years imprisonment on each charge.<sup>1</sup> Mr Abraham now seeks an extension of time within which to appeal to this Court against the sentence. The sole ground of the proposed appeal is that the sentence the Judge imposed was manifestly excessive.<sup>2</sup>

[2] Although the appeal was filed well out of time, Mr Abraham has provided an explanation for the delay and the Crown does not oppose the application for an extension of time within which to appeal against sentence. For those reasons we grant that application and proceed to consider the appeal against sentence.

## **Facts**

[3] The Judge sentenced Mr Abraham on the basis of a summary of agreed facts. This recorded that Mr Abraham began sexually abusing his victim when she was 10 years of age. The victim spent considerable time at Mr Abraham's home at that time, because she was being cared for to a large extent by Mr Abraham's wife.

[4] The offending commenced in April or May 2008, when Mr Abraham began exposing his genitalia to the victim. He subsequently encouraged her to touch his penis, and on several occasions he also masturbated himself in the victim's presence. These incidents occurred in a bedroom at Mr Abraham's home, or in the bathroom of the victim's home.

[5] Matters progressed further over the next twelve months. Mr Abraham suggested to the victim that they should have sexual intercourse, and took her to a vacant section he had found in an industrial area. There he put the victim on the ground, and unsuccessfully tried to penetrate her vagina with his penis. He stopped when the victim complained that what he was doing was too painful for her.

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<sup>1</sup> *Police v Abraham* DC Palmerston North CRI-2010-054-2014, 16 September 2010.

<sup>2</sup> Mr Abraham abandoned an appeal against conviction and it is accordingly dismissed.

[6] Approximately two weeks later, Mr Abraham took the victim back to the same vacant section. On this occasion he was able to penetrate the victim's vagina with his penis, and full sexual intercourse took place. Further acts of sexual intercourse took place at the same location on two other occasions. All of this offending occurred before the victim was 12 years of age.

[7] Mr Abraham continued to offend against the victim up until approximately March 2010. During this period, at least five further acts of full sexual intercourse took place. On three of these occasions Mr Abraham drove the victim to an abandoned campervan parked in a remote area on the outskirts of town. There he had sexual intercourse with the victim on mattresses that had been placed in the rear of the campervan. On these occasions Mr Abraham took photographs of the victim. On at least one occasion, he and the victim were engaged in sexual acts when he took the photographs.

[8] On two other occasions Mr Abraham took the victim to other locations, where further acts of sexual intercourse took place.

### **The sentence**

[9] The Judge considered the offending fell within band three identified in the guideline judgment of this Court in *R v AM*.<sup>3</sup> He took a starting point of 15 years imprisonment, and then allowed a deduction of one-third to reflect Mr Abraham's early guilty pleas and remorse. This produced the end sentence of 10 years imprisonment.

### **Issue on appeal**

[10] The only issue on appeal is whether the starting point of 15 years was too high. Counsel for Mr Abraham accepts the offending fell within band three in *R v AM*, which calls for a starting point of between 12 and 18 years imprisonment. He submits, however, that the offending fell towards the lower end of band three, and warranted a starting point of around 12 to 13 years imprisonment.

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<sup>3</sup> *R v AM (CA27/2009)* [2010] NZCA 114, [2010] 2 NZLR 750.

## Decision

[11] In *R v AM*, this Court identified factors that may increase the culpability of sexual offending.<sup>4</sup> These include the nature and scale of the offending, whether the offending involved planning and premeditation, the extent to which the victim is vulnerable, the degree of harm caused to the victim, and whether the offending occurred in circumstances amounting to a breach of trust. The Court considered band three to be appropriate for offending that is accompanied by aggravating features at a relatively serious level.<sup>5</sup> It encompasses offending involving two or more factors that increase culpability to a high degree, or more than three of those factors to a moderate degree.

[12] In the present case, several of the aggravating factors identified in *R v AM* are present. First, Mr Abraham selected a victim who was vulnerable because of her age and the close relationship she had with his family. Mr Abraham was also nearly 40 years older than the victim. As a consequence of these factors, his offending amounted to a significant breach of trust.

[13] Secondly, the offending contained significant elements of planning and premeditation. Mr Abraham deliberately took the victim to sites selected for their remoteness in order to carry out the offending.

[14] Thirdly, the offending occurred over a period of nearly two years. It involved one incident of attempted sexual intercourse followed by at least eight incidents where full sexual intercourse took place. Three of these occurred before the victim turned 12 years of age, and at least five occurred after she attained that age. In addition, there was the earlier activity involving indecent touching and masturbation in front of the victim. The offending therefore contained elements of grooming, in which Mr Abraham introduced the victim to different forms of sexual activity before attempting to have full sexual intercourse with her.

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<sup>4</sup> At [34]–[64].

<sup>5</sup> At [105].

[15] The offending was further aggravated by the fact that Mr Abraham was prepared to photograph the victim on at least one occasion whilst sexual activity was taking place.

[16] Finally, the victim impact statements from both the victim and her mother make it plain that the offending has produced extremely serious consequences for the victim. It is likely that these will last for many years.

[17] These factors persuade us that the Judge was entitled to select a starting point in the middle of band three in *R v AM*. It is also noteworthy that counsel who appeared for Mr Abraham at sentencing had advocated a starting point of 15 years imprisonment, and an end sentence of 10 years imprisonment.

[18] We therefore conclude that the starting point was well within the range available to the Judge.

## **Result**

[19] The application for an extension of time within which to appeal is granted, but the appeal against sentence is dismissed.

Solicitors:  
Crown Law Office, Wellington for Respondent