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ACT 1985.**

IN THE COURT OF APPEAL OF NEW ZEALAND

**CA302/2012
[2012] NZCA 617**

BETWEEN	JACQUES JOHN FRANCIS DE REEPER Appellant
AND	THE QUEEN Respondent

Hearing: 22 November 2012

Court: White, Miller and Asher JJ

Counsel: F E Guy-Kidd for Appellant
A M Toohey for Respondent

Judgment: 20 December 2012 at 4.00pm

JUDGMENT OF THE COURT

- A The appeal against convictions is dismissed.**
- B The appeal against sentence is allowed.**
- C The sentence of five and a half years' imprisonment is quashed and substituted by a sentence of imprisonment for three years and eight months.**

REASONS OF THE COURT

(Given by Asher J)

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Introduction

[1] Jacques John Francis de Reeper appeals his conviction and sentence. The offending was historic. He was found guilty in the District Court at Invercargill of one count of rape between 12 August 1971 and 12 August 1972 and three counts of indecent assault on a single different complainant between 1982 and 1985. He was sentenced by Judge K J Phillips on 27 April 2012 to three and a half years for the rape count and two years cumulatively for the lead indecent assault count, giving a total of five and a half years’ imprisonment.

[2] Prior to the hearing Mr de Reeper abandoned appeal grounds based on the verdict being unreasonable or unsupportable having regard to the evidence, and that the conviction should be set aside because of an error of law. Rather, the appeal against convictions was advanced solely on the basis that there was a miscarriage of justice under s 385(1)(c) of the Crimes Act 1961. The primary basis of that submission was counsel error during the trial.

[3] Mr de Reeper was given leave to adduce fresh evidence on appeal. He filed affidavits by himself, his mother J and his brother T. The Crown in reply filed an affidavit of Roger Eagles, Mr de Reeper's counsel during the trial. At the hearing of the appeal the appellant, his mother and Mr Eagles were cross-examined.

Background

[4] The complainant in the rape count, complainant A, was a relative. During 1971–1972 she was aged nine and Mr de Reeper was aged 14 or 15. Complainant A had gone to the family home of the appellant to stay the night. She would normally sleep in the bedroom of Mr de Reeper's sister. In addition to his sister, Mr de Reeper had four brothers. He and his elder brother shared one room and the three younger boys another. So there were three childrens' bedrooms.

[5] Complainant A asserted that on a night in the 1971–1972 period after an evening of play with other children at the house she did not sleep with the sister, but rather fell asleep in the younger boys' bedroom. She stated that Mr de Reeper got into her bed in the middle of the night and raped her.

[6] The second complaint had no factual connection with the first and arose 10 or more years later between 1982 and 1985. The second complainant, complainant B, was another relative of Mr de Reeper's brother. She described at least two incidents that occurred between 1982 and 1985, when she was aged between eight and 11 and Mr de Reeper was aged between 25 and 28. On one occasion she claimed Mr de Reeper took her to his motorcycle workshop, pulled her pants down, touched her vagina and then masturbated in front of her and ejaculated. On a second occasion Mr de Reeper took her on a bike ride and after getting complainant B into a position where she was alone, allegedly touched her vagina. On a third occasion at Mr de Reeper's workshop he licked complainant B's vagina. She was not clear whether this was in fact a separate incident or occurred on the earlier occasion when he had masturbated in front of her.

The conviction appeal

[7] The question that arises is whether there has been a miscarriage of justice, with the focus being on the safety of the verdict, rather than evaluating the gravity of counsel's error.

[8] It is necessary to record at the outset that there were a number of features of the case which the Crown was able to put before the jury in support of the charges in addition to the evidence of the two complainants.

[9] In relation to complainant A, first there was some corroborative evidence of complainant A's claim. Her mother gave evidence that her daughter complained the morning after staying at the de Reeper household and claimed that Mr de Reeper had interfered with her. She and her husband then went over to see Mr de Reeper's parents. They called Mr de Reeper in and the complainant's mother gave evidence that Mr de Reeper admitted to having touched her. Mr de Reeper's mother also admitted that this occurred. Mr de Reeper's mother and her husband decided to see their family doctor to discuss the matter with him.

[10] Secondly, the complainant gave evidence of an earlier occasion when she was about seven and Mr de Reeper about 11 or 12. She had stayed at Mr de Reeper's home. When she was in bed Mr de Reeper allegedly came into the room and got on top of her and started undoing her blouse. She said that he put his finger inside her vagina, then he was interrupted and left.

[11] Thirdly, there were Mr de Reeper's admissions. He admitted that there was an instance where he and complainant A had removed their lower clothing and explored each other, but maintained that this occurred when he was 12 and at a playhouse at the rear of complainant A's house. He said that following this incident the complainant's mother had met with him and he and his parents had eventually confessed that he and complainant A had pulled their pants down and shown each other their genitalia. In his evidence at the trial Mr de Reeper denied that the exploring of each other involved touching.

[12] Fourthly, there was propensity evidence of other inappropriate sexual activity towards young girls on the part of Mr de Reeper. His sister gave evidence that when Mr de Reeper was around 12 or 13 he touched her vagina area in her bedroom while she was in bed.

[13] In relation to complainant B, in his interview with the Police, Mr de Reeper admitted an incident where the complainant had gone to his workshop and an incident occurred in that he touched her vagina although he denied rubbing the complainant's vagina. In his evidence at the trial he denied that he touched complainant B's vagina and explained his statement to the contrary to the Police by saying that he was in shock.

[14] Mr de Reeper in his interview with the Police accepted that touching of complainant B's vagina might have occurred if she consented. In his evidence, however, he denied the possibility of touching her. His version of events was that he got complainant B to remove her pants and that he removed his, and then he masturbated in front of her and ejaculated.

[15] Thus in respect of the rape complaint there was some corroboration from the accounts of the events of the next day. There was propensity evidence indicating Mr de Reeper's sexual interest in the complainant, and in young girls. In relation to the second complainant there were admissions at interview and admissions in evidence as to his sexual interest in the complainant. The counts were also relevant as propensity evidence in respect of each other.

[16] It is our general view that the Crown case could be seen as supported by strong corroborative and propensity evidence.

Allegation of counsel error – failing to call T

[17] It was the primary submission of Ms Guy-Kidd for Mr de Reeper on the conviction appeal that Mr de Reeper's brother, T, should have been called. She submitted that the layout of the bedroom occupied by the three younger brothers was a critical issue in the trial. It was the defence case that this relatively small room was

totally occupied by the boys' three beds and that at night there was no room for any other person.

[18] Further, it was the defence case that there was a strict rule in the de Reeper household that girls and boys should sleep in separate rooms, and that rule was always observed. T could have given evidence that although he was only seven at the time he had a good memory. He had suffered a lot of sickness and was a light sleeper and would wake whenever anyone came into the room. He could have sworn that the complainant had never slept in the bedroom as he would have known if she had. He had the middle bed, so he would have been right beside the bed where the alleged rape occurred. He could recall nothing untoward through the relevant period.

[19] Ms Guy-Kidd put it that this was another voice from the bedroom and important corroborative evidence for the defence case. T's clear recollection that there was no incident of complainant A sleeping in his room was damaging to the Crown case. It could have raised a real doubt in the jury's mind.

[20] We do not accept that this evidence would have had any particular probative value. There was already the evidence of Mr de Reeper's mother and another brother who was called who both described the sleeping arrangements in the house, particularly in the bedroom. Complainant A herself had observed that the bedroom was crowded with beds, although she did at a later stage say that there might have been an extra mattress put down for her. There was also evidence already adduced about the separate bedrooms rule for boys and girls.

[21] The evidence in relation to the bedroom from a Crown perspective was undoubtedly confusing and this was a problem in the Crown case. The evidence about the crowded layout of the bedroom was already strong and clear.

[22] Additional evidence from a witness who at the time was seven, would not in our view have added anything in particular to the weight of the defence case on the point. Indeed, we accept Mr Eagles' observation that calling the younger brother might indeed have weakened the defence case. This was because a jury might well consider it to be stretching credibility for a person to assert confidently where he had

spent every night 31 years ago when he was seven years old. The very good evidence the defence already had on the layout of the bedrooms from the mother and brother might indeed have been weakened by the calling of T. This could have appeared to the jury to be a rather desperate move on the part of the defence to shore up a weak defence case. For the reasons given by Mr Eagles there was good reason not to adduce this additional evidence.

[23] We do not see any need to go into the detailed evidence about the efforts made on Mr Eagles' part to talk to the brother. Mr Eagles did make an effort to contact the brother. When the brother did not co-operate Mr Eagles did not put any particular effort to ensure that he made contact. Nor did Mr de Reeper, who was aware of the lack of contact. However, that is not the key to our decision. Our decision turns on our acceptance of Mr Eagles' assessment that this was not a witness who it was in the interest of the defence case to call. This was the sort of choice that has to be made by counsel, and was entirely open to him.

[24] We also cannot accept the related submission that Mr Eagles should have produced photographs of the bedroom. First, we do not consider that such photographs would have added anything given that the evidence was clear that there was no room for extra beds in the bedroom. Secondly, we do not consider it established that it had been made clear to Mr Eagles that such photographs existed.

Mr de Reeper's mother's misunderstanding

[25] Mr de Reeper claimed that he suffered from ill health during the relevant period, and that for two and a half months his mother was bathing him. This made it unlikely that he would have raped complainant A. It was put to the jury by his counsel that this illness would have made him incapable of that sort of physical activity.

[26] During the course of cross-examination the Crown prosecutor asked the Mr de Reeper's mother whether she would have had to shower Mr de Reeper or give him a bed bath during the relevant period. She answered "no". The mother, in her affidavit, said that her response was a mistake and arose from the fact that English

was not her first language and she did not understand what was meant by the phrase “bed bath”. She asserted that she did in fact wash Mr de Reeper with a facecloth in the lounge and did not trust him on his own in the bath because of his ill health.

[27] Crown counsel mentioned in closing that there was this contradiction between Mr de Reeper’s evidence and that of his mother, and implicitly that the contradiction damaged Mr de Reeper’s credibility.

[28] We observe that this was not an issue of counsel error, but rather whether there was a miscarriage of justice arising from an answer to a question during the trial which it is now said was inaccurate. We consider that the point was trivial and unlikely to have influenced the jury. We note that there was evidence that Mr de Reeper was ill at the time in the form of hospital records admitted by consent confirming his illness, and other uncontested evidence as to his general bad health in the relevant period.

[29] In any event we are not satisfied that there was any actual error in the mother’s reply that needed to be corrected at trial. We accept the submission of Ms Toohey for the Crown that it is clear from the mother’s evidence under cross-examination in the trial that she did not have a good memory of the 1971–1972 time period. It was not brought to the attention of counsel during the trial that there had been this mistake made by her. If she had been recalled and sought to change her earlier answer, this may have had the effect of over-emphasising the point and thus damaging the defence.

Failure to cross-examine complainant A’s mother in regard to alcoholism

[30] It was submitted for the appellant that there was a failure to lead evidence or cross-examine complainant A’s mother regarding her alcoholism. The mother was called to give evidence about what her daughter, complainant A, said the day after the rape, and about what Mr de Reeper said at the subsequent meeting. There were differences between what Mr de Reeper said in his evidence and what the mother said, although Mr de Reeper did admit that a meeting of the nature described took place and that he made some sort of concession. The defence case was that the

meeting related to an incident some time earlier at the de Reepers' previous house. So the accuracy of the complainant's mother's recall was at issue.

[31] Mr Eagles explained why he did not cross-examine the complainant's mother on her alcoholism. She had already presented in her evidence as being "wasted, vague and unreliable". She could not remember when she got married and stated that she could hardly remember when she was born. So her poor mental and physical state was there for the jury to see. On balance Mr Eagles decided not to attack her personally as he did not think the jury would like such an attack. Further, he ran the risk of the complainant's mother admitting her alcoholism but emphasising how she would not forget an incident where her daughter was sexually molested.

[32] This was a matter of trial judgment and we accept Mr Eagles' decision on this issue as entirely open to him as competent counsel. We do not think it could have given rise to a miscarriage of justice.

Disclosure of prejudicial material in interview with Police

[33] In his interview Mr de Reeper referred to himself as having a "past record". It was submitted that there should have been a challenge to the reference, and at least some judicial direction that it should be disregarded.

[34] However, the reference in the context of the statement is plainly to a previous drug record and not to indecent assault. This would have been apparent to the jury. Further, there was already evidence before the Court that Mr de Reeper had been involved in previous sexual misconduct. There was nothing to be gained by an application to remove this reference in the video interview.

Conclusion on appeal against conviction

[35] For the reasons we have set out, the Crown's case was well corroborated, and Mr de Reeper's evidence contained obvious weaknesses. It is our assessment that Mr Eagles as counsel acted diligently and with competence for Mr de Reeper. We

cannot accept that there was any error on the part of trial counsel, or any circumstance arising through the trial which might have led to a miscarriage of justice.

[36] The appeal against conviction is dismissed.

The appeal against sentence

The decision

[37] The Judge set out the facts and noted that Mr de Reeper could not claim good character given that he had prior convictions for indecent assault in April 1989 and doing an indecent act in 2003. He observed that an aggravating factor was the clear breach of trust.

[38] The Judge regarded the rape against complainant A as opportunistic, but the sexual contact with complainant B as premeditated. He noted that the sexual violation occurred at a time when the maximum sentence was 14 years. Rather than apply *R v AM (CA27/2009)*¹ he applied the 1987 decision of *R v Clark*² where it was observed that for a rape committed by an adult without any aggravating or mitigating features, five years should be taken as the starting point in a contested case. In relation to the rape sentence he discounted that by 30 per cent (18 months) on account of Mr de Reeper's youth at the time. Thus the sentence for the rape count was three and a half years. The accepted that a prison sentence would be difficult for Mr de Reeper.

[39] In relation to complainant B, the Judge considered that Mr de Reeper had purposefully selected her and set out to isolate her so he could have sexual contact with her. He thought on those charges that there should be a starting point of 18 months on the lead indecent assault charge with a discrete uplift of six months for the other two counts. He observed:³

¹ *R v AM (CA27/2009)* [2010] NZCA 114, [2010] 2 NZLR 750.

² *R v Clark* [1987] 1 NZLR 380 (CA).

³ *R v de Reeper* DC Invercargill CRI-2010-025-3182, 27 April 2012 at [15].

I consider that when one has regard to that the prisoner has had an allowance which has taken into account the historical nature of that account and has allowed for totality. I do not therefore intend to further allow totality in all the circumstances of the matter.

[40] The Judge noted the serious impact on the victims and also stated that there could be no discount for remorse.

[41] In the end he determined that the two years' imprisonment for the indecent assault should be cumulative on the three and a half years' imprisonment for rape so that the total term of imprisonment was five and a half years.

Sentencing framework

[42] The *R v Taueki*⁴ sentence methodology and the *R v AM* guideline judgment and bands must be applied in relation to all current offending when the sentencing process is in the District or High Court, even where the offender is a youth.⁵ This Court in *R v W* confirmed that application of the *Taueki* methodology to offending that took place before that judgment was released would not breach our constitutional prohibitions on retrospective penalties, so the *Taueki* approach can be applied to historic sexual offending as in this case.⁶ Youth will be taken into account by the Judge in the course of applying the *Taueki* sentencing process as a personal mitigating factor.

[43] The same cannot be said for the retrospective application of the *R v AM* guidelines to the period pre-dating the increase in the maximum penalty for rape. In this sentencing it is a complicating factor that the maximum penalty for rape in 1972–1973 at the time of the offending was 14 years' imprisonment and not 20 years' imprisonment. Under s 25(g) of the New Zealand Bill of Rights Act 1990 a defendant must be sentenced in accordance with the penalty applicable at the time of the offending, if that penalty is less than the penalty applicable at the time of sentencing. Section 6(1) of the Sentencing Act 2002 is to the same effect. This

⁴ *R v Taueki* [2005] 3 NZLR 372 (CA).

⁵ *Pouwhare v R* [2010] NZCA 268, (2010) 24 CRNZ 868.

⁶ *R v W* (2006) 23 CRNZ 531 (CA) at [27]–[32].

Court has repeatedly confirmed this in cases of historical sexual abuse.⁷ It was observed in *R v Accused* (CA463/97):⁸

The starting point for any sentence must be fixed in the context of the maximum penalty available at the time and generally by reference to any discernible sentencing regime of that era. However, that does not involve attempting to reconstruct the sentencing mores of an earlier time. For example, if a particular type of offending was formerly regarded less seriously than now, present day attitudes must govern the sentencing approach.

[44] There was a different regime in place in 1972–1973 in relation to young offenders. Prior to the Children and Young Persons Act 1974, a “welfare model” of youth justice prevailed in New Zealand. The Child Welfare Act 1925 was the first piece of legislation in New Zealand to embrace this model and focused on redefining the delinquent as a child in need.

[45] The Magistrate, Justice or Children’s Court could make an order for committal of the child to the care of the Director-General or the supervision of a Social Worker,⁹ and the Director-General or any person authorised on his behalf could direct the child into an institution established under the Act for a certain period.¹⁰

[46] Children could also be “boarded-out” to suitable homes while they were in the care of the Director-General.¹¹ Other regimes applicable to young offenders over 15 included sentences of corrective training,¹² detention in a detention centre,¹³ and detention in a borstal training centre.¹⁴

[47] It is clear that the Children’s Court would initially have had exclusive

⁷ See for example *R v R* (CA244/04) CA244/04, 2 November 2004, affirmed in *R v KJB* (CA41/07) [2007] NZCA 292.

⁸ *R v Accused* (CA463/97) (1998) 15 CRNZ 602 (CA) at 609.

⁹ Child Welfare Act 1925, s 13(4).

¹⁰ Section 13(6).

¹¹ Section 20.

¹² Criminal Justice Act 1954, s 14A.

¹³ Section 16.

¹⁴ Section 18.

jurisdiction.¹⁵ However, it would have also had the power to commit Mr de Reeper to the then Supreme Court for trial or sentence.¹⁶

[48] We have not been referred to any cases involving the sentencing of a youth under the age of 15 for rape around the 1972–1973 period. However, we do not accept Ms Guy-Kidd’s submission that the absence of any reported cases indicates that all such cases were dealt with in the Children’s Court. Rape cases were more infrequent back then, and this may be the reason for the absence of reported cases. There is no sentencing policy for discounts for youth that can be discerned from cases of the 1970s.

[49] We are mindful of the fact that Mr de Reeper is no longer a youth and appears before us for sentence as a mature adult. Issues as to the effect on him as a youth of serving a prison sentence do not arise. Given his age, we do not think that any difference that may be discerned between the 1973 approach to youth offending and today’s approach arises as a particular factor.

[50] However, the general sentencing regime in relation to rape in the 1970s must be identified. Decisions from the time must be approached with caution, as the current sentencing methodology outlined in *Taueki* did not apply then and today’s concepts of a starting point, aggravating and mitigating factors, and discount for guilty plea were not part of the sentencing process. Nevertheless sentencing levels of the relevant time are relevant in assessing the appropriate penalty in this case.¹⁷

The rape count starting point – our analysis

[51] If Mr de Reeper had committed the offending under the present sentencing regime and was to be sentenced on that basis, the starting point is likely to have been seen as being in band two of *R v AM* (seven to 13 years), given the young age of the victim and the age disparity. There were no features such as premeditation or cruelty that would militate for a high starting point.

¹⁵ Child Welfare Act 1925, s 29.

¹⁶ Child Welfare Amendment Act 1927, s 19.

¹⁷ *R v R (CA244/04)* CA244/04, above n 7, and *R v KGB*, 1 above n 7, at [29]–[31].

[52] The case of *R v Clark*, applied by Judge Phillips in reaching a starting point, was a 1987 decision. It was a sentence under the 14 year maximum regime, and has some relevance. It was stated in *R v Clark* by Cooke P that as a general proposition, “a figure of five years should be taken as a starting point in a contested case”.¹⁸ However, in *R v Puru* in 1984 this Court noted that there had been an upward trend in the previous five years in the severity of sentences, especially for rapes that had particularly aggravating features.¹⁹ Of more relevance to this sentencing are the 1978 cases of *R v Pui*²⁰ and *R v Pawa*.²¹ In *R v Pui*, a sentence of six and a half years’ imprisonment was imposed in relation to a brutal rape of an adult which involved threatening with a knife and a slight knife wound. Of particular relevance is *R v Pawa*, where a sentence of imprisonment of six years was imposed when a 22 year old had raped an eight year old, causing her to bleed profusely. It was noted in that case:²²

There has to our knowledge been of recent times one case of child rape dealt with by the Supreme Court. In that case a sentence of six years was imposed. ... In the case of first offenders the general level of sentencing in [very bad rape] cases has run in the region of from four to seven years imprisonment. We should add that those sentences themselves have been at a level which has been increased over recent years as the incidence of such offending has seemed to make longer sentences desirable.

[53] *R v Pawa* was a case where the culpability was greater than in this case, given the age disparity, and the infliction of real injury to the victim. There was also an element of breach of trust. Here despite suggestions in the sentencing decision to the contrary,²³ there were no distinct elements of breach of trust or violence, and the age gap was much smaller.

[54] We have concluded that the five year starting point reached by the Judge was unduly high and that a four year starting point was more appropriate.

¹⁸ *R v Clark*, above n 2, at 383.

¹⁹ *R v Puru* [1984] 1 NZLR 248 (CA) at 254.

²⁰ *R v Pui* [1978] 2 NZLR 193 (CA).

²¹ *R v Pawa* [1978] 2 NZLR 190 (CA).

²² At 191–192.

²³ Above n 3, at [5], [6] and [12].

Discount for youth – our analysis

[55] In *Pouwhare v R*²⁴ this Court observed that once a young person was transferred for sentence to the District Court or the High Court the Sentencing Act would apply. The *Taueki* methodology applies, and sentencing Judges should consider first the offence and its objective seriousness, and then look at the circumstances personal to the offender. There is no top limit to the sentencing discount available for youth.

[56] At around 14 and 15 years of age, Mr de Reeper at the time of the offending was young. In the 2008 pre-*R v AM* case of *R v Alletson*²⁵ the appellant was aged between 15 and 17 years at the time of the offending. There were multiple occasions of digital penetration against two victims aged between six and 10 years during the relevant time, involving the lesser charges of indecent assault and inducing an indecent act. The age disparity was greater than in relation to this incident. A discount of 43 per cent was regarded there as more than adequate recognition of the appellant's youth at the time of the offending. Mr Alletson was aged around 21 at the time of sentence.

[57] Here there is not the concern that arises in some sentencings of a young person being put into a prison environment, as Mr de Reeper is no longer a young person. There is also not the concern of limiting a young person's prospects of rehabilitation. Given Mr de Reeper's record, there is not the concern that can arise of sentencing a person who has led an exemplary life long after the event. We have concluded that a term of imprisonment should be imposed in relation to the rape count.

[58] There is little information about Mr de Reeper's personal situation in the 1970s, and his ongoing denial of the offending means that there is no explanation as to why he acted in the way he did. However, the sentence must reflect the significant discounts given today on account of youth at the time of the offending, in

²⁴ *Pouwhare v R*, above n 5 at [74].

²⁵ *R v Alletson* [2009] NZCA 205.

recognition of the immaturity and lack of judgment of a young person, which may reduce his or her criminal responsibility.²⁶

Conclusion as to the sentence on the rape count

[59] The *R v AM* band two starting point cannot be used in this sentencing exercise given the different maximum penalty at the time, but the youth discount applicable by today's standards can be used.

[60] We consider that applying today's standards, but bearing in mind the sentencing levels and lower maximum penalty in the 1970s, a starting point of four years should have been adopted.

[61] This Court has confirmed that there is no outer limit to the discount that can be given for youth.²⁷ Taking into account the current discounts allowed for youth, we consider the appropriate discount was 45 per cent, considerably more than the 30 per cent allowed by the Judge. Applying that deduction, and a four year rather than a five year starting point, the end sentence on the rape count should be two years two months' imprisonment.

The indecent assaults

[62] To this must be added an uplift for the convictions on the indecent assaults. The indecent assaults involved contact with complainant B's genitalia. Mr de Reeper was in his late twenties at the time. There was premeditation and a gross breach of trust. The starting point of two years' imprisonment for this offending adopted by the Judge has not been challenged and was within the range.

[63] However, there had to be an allowance for totality. We do not agree with the Judge's assessment that any allowance made for the historical nature of the offending was enough, and indeed we do not discern that any allowance has been made for the historical nature of the offending, save for the discount for youth in the

²⁶ At [66]. See also *R v Churchward* [2011] NZCA 531, (2011) 25 CRNZ 446 at [77(a)].

²⁷ *Pouwhare v R*, above n 25, at [83].

District Court sentence. The right allowance for totality is to increase the sentence on the lead rape count by 18 months for the indecent assaults, and not two years.

[64] Therefore we consider that the end penalty should have been three years and eight months' imprisonment rather than the sentence imposed of five and a half years' imprisonment. This involves a two year two month sentence for the rape and an 18 month sentence for the indecent assaults, taking into account totality.

Result

[65] The appeal against convictions is dismissed.

[66] The appeal against sentence is allowed.

[67] The sentence of five and a half years' imprisonment is quashed and substituted by a sentence of imprisonment for three years and eight months.

Solicitors:
AWS Legal, Invercargill for Appellant
Crown Law Office, Wellington for Respondent