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

IN THE COURT OF APPEAL OF NEW ZEALAND

**CA573/2013
[2013] NZCA 642**

BETWEEN	WILLIAM GEORGE ROBERSON Appellant
AND	THE QUEEN Respondent

Hearing:	21 November 2013
Court:	Randerson, Heath and Asher JJ
Counsel:	P H H Tomlinson for Appellant M E Ball and M L Wong for Respondent
Judgment:	11 December 2013 at 3:30 pm

JUDGMENT OF THE COURT

The appeal against sentence is dismissed.

REASONS OF THE COURT

(Given by Randerson J)

Introduction

[1] The appellant, Mr Roberson, was convicted after a jury trial on a range of sexual offending committed against four young children. He was later sentenced by the trial Judge, Courtney J, to an effective sentence of 18 years imprisonment with a minimum period of imprisonment of 10 years.¹

¹ *R v Roberson* [2013] NZHC 1929.

[2] Mr Roberson appeals against his sentence on the grounds that it is manifestly excessive. He submits that no more than 16 years imprisonment was warranted and that the minimum period should not have exceeded eight years (50 per cent of the total appropriate sentence).

Background facts

[3] There is no dispute about the facts. The offending spanned the period 1995 to 2006 but was not continuous over that period. We will refer to the offending in chronological order although it was the last of the offending which was the most serious.

Offending against T – 1995 to 1999

[4] T and another complainant (J) are cousins. On three separate occasions between 1995 and 1999 Mr Roberson did an indecent act in relation to T. She was aged between three and six years old at the relevant times. During that period, Mr Roberson was aged between 17 and 21. The offending included picking T up and rubbing her against his groin while his pants were partially removed, pushing T down and trying to lie on top of her, and tickling her before attempting to persuade her to touch his groin.

Offending against J – 1998 or 1999

[5] This offending involved a single act of anal sex against a male complainant who was then aged 4 or 5 years. At that time, Mr Roberson was 20 to 21 years of age. J resided with his aunt, who was Mr Roberson's neighbour. Mr Roberson was frequently at J's home and often left alone with J. On one such occasion, Mr Roberson took J into a bedroom where he removed his own pants and directed J to do the same. Mr Roberson told J to put J's penis between his buttocks, which J did. Mr Roberson then had J lie down on the floor. He inserted his penis into J's anus. Mr Roberson was convicted of sexually violating J and inducing J to do an indecent act.

Offending against C and S - 2006

[6] Mr Roberson was convicted on two representative counts of rape in respect of two young girls, C and S over the period March to October 2006. At this time the appellant was aged between 28 and 29 years. C was five years old and S was aged three to four. Mr Roberson befriended the victims' parents and eventually boarded with their family. During 2006, the victims' father moved into a rehabilitation centre close by. Mr Roberson was thereafter entrusted with the care of the victims in the morning while their mother went to work, and before their father arrived to look after them. While alone with the victims, Mr Roberson made them lie down on his bed and proceeded to rape each of them. The Judge found this occurred regularly and frequently over the seven month period.

The Judge's approach to sentencing

C and S

[7] The Judge adopted the offending against C and S as the lead offending for sentencing purposes. She identified several aggravating features:

- The offending became a pattern and was not merely opportunistic in nature;
- there was a level of planning and pre-meditation;
- the girls were very young, one a preschooler and so especially vulnerable; and
- there was a "dreadful" breach of trust in that Mr Roberson was a trusted family friend and boarder who was left to care for vulnerable young children while their mother was at work.

[8] The Judge considered that the features of this offending brought it within the lower end of band four in *R v AM (CA27/2009)*.² That would attract a starting point of between 16 and 20 years. Courtney J adopted a starting point of 16 years on each

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

charge on the basis that the sentences for that offending would be served concurrently.

J

[9] Dealing with the offending against J, the Judge accepted that the offending occurred on a single occasion and was purely opportunistic. Nevertheless, she regarded the offending as serious against a vulnerable preschooler. There was a breach of trust in that the family had placed the complainant in Mr Roberson's care. A victim impact report had noted the long term and profound effects of the offending on the complainant and his family. The Judge expected those consequences to continue for many years.

[10] The offending against J was considered by the Judge to fall within the higher end of band two in *R v AM*. On that footing, a starting point in the range of seven to 13 years was appropriate. The Judge selected a sentence of 10 years on the sexual violation charge and six years on the indecency charge. Again, these sentences were to be served concurrently with those imposed in relation to C and S.

T

[11] The Judge came finally to the indecency charges which had occurred on three separate occasions in relation to T. She noted a victim impact report in which T described her feelings of embarrassment and her memories of these incidents. T had difficulty telling anyone about the offending and has always been afraid of being touched. She was also experiencing feelings of guilt at discovering that Mr Roberson had offended later against other children. She thought she could have prevented that by speaking out sooner.

[12] The Judge regarded the first of the three indecencies against T as the most serious of the offending against her. She imposed a sentence of five years imprisonment on that charge and sentences of 18 months imprisonment on each of the other two charges, to be served concurrently with all the other sentences.

The uplift for totality

[13] Given that all the sentences proposed were to be served concurrently, the Judge considered that an uplift of two years to the sentences of 16 years on the lead rape counts was justified. She said:

[19] The indicative sentence following the imposition of all of these various terms is therefore 16 years. However, I must increase that to reflect the fact that this was sustained offending and serious offending against very young children in gross breach of trust and with undoubted long-term psychological consequences for the children concerned. I have not had the benefit of a victim impact report in relation to C and S. However, their parents gave evidence at your trial and it is abundantly clear that their family is absolutely devastated and it does not take very much imagination to envisage the effect on the very young girls of such serious offending at such a young time in their lives. I consider that an uplift of two years is the least that I can impose to reflect the totality of this offending. I increase the sentence to be served in respect of the sexual violation of S, the youngest victim, to 18 years.

The minimum term of imprisonment

[14] The Crown had sought a minimum period of imprisonment under s 86 of the Sentencing Act 2002 of two-thirds of the sentence. On this point, the Judge said:

[21] As I have noted, I am dealing with sustained, serious offending against four very young children. The pre-sentence report describes you as a troubled man with no insight into your offending, no remorse and no interest in addressing the causes of your offending. You have done no more than acknowledge the possibility of these offences occurred on the basis that you were using a lot of cannabis at the time and so you allow for the possibility that it might have happened. You are assessed as being at high risk of further sexual offending against children because of these factors.

[22] These aspects cause me enormous concern. I am particularly worried about the future threat you pose to the community. I am satisfied that I should impose a minimum term of imprisonment and that that term should be two thirds of the end sentence.

[15] This resulted in the final sentence of 18 years with a minimum period of imprisonment of 12 years. The Judge later adjusted this to 10 years (reflecting the maximum term available under s 86). The Judge also recorded that there were no mitigating circumstances that might reduce the sentence.

Submissions on appeal

[16] On Mr Roberson's behalf, Mr Tomlinson submitted that the sentence was manifestly excessive and should not have exceeded 16 years in total. His main points were:

- The sentence of five years imprisonment for the three indecency counts relating to T was manifestly excessive and should not have exceeded 18 months to three years imprisonment.
- The uplift of two years on the 16 year sentence imposed for the rape counts involving C and S was excessive. Either there should have been no uplift at all or, if there needed to be one, then the starting point for the rape counts should have been 15 years with an uplift of one year for the additional offending.
- The Judge erred in describing the offending as "sustained".
- The minimum period of imprisonment should have been no greater than 50 per cent rather than the 55 per cent imposed.

Discussion

[17] Mr Tomlinson accepted that the sentence of 10 years imprisonment in relation to the offending against J was within range. We agree. But we are inclined to the view that the sentence imposed for the three indecencies involving T was higher than might have been expected bearing in mind that there was no skin to skin contact. On the other hand, there was a serious breach of trust, T was a very young child and the indecencies went beyond simple touching. Mr Tomlinson accepted that any sentences imposed for the offending against T, were overshadowed by the sentences for the lead offences. He submitted nevertheless that the importance of the sentences in relation to T lay in what was appropriate in terms of an uplift on the lead sentences, if any.

[18] Given that the sentences on all charges are to be served concurrently, Mr Tomlinson's approach was realistic. In the end, the key issue is the overall effective sentence of 18 years imprisonment. In that respect, we are satisfied that the starting point of 16 years imprisonment for the rape counts involving C and S was

appropriate. The uplift of two years to reflect Mr Roberson's culpability for the overall offending was available and not manifestly excessive.

[19] We agree with the Judge that the offending against C and S fell clearly within band four in *R v AM* in that the two very young children were repeatedly raped over a seven month period in circumstances where Mr Roberson had been entrusted with their care while their parents were absent. The Judge adopted a starting point at the bottom end of the 16 to 20 year indicative sentences for this band of sexual offending.

[20] The uplift of two years was also well justified given that the offending involved four young children over a period of 11 years between 1995 and 2006. While we accept Mr Tomlinson's point that the offending was not continuous over that period, it was nevertheless persistent, involved a serious breach of trust in each case and, for the most serious offending against C and S, was undoubtedly sustained.

[21] We conclude that the effective 18 year sentence was not manifestly excessive.

[22] Finally, in relation to the minimum period of imprisonment, we are not inclined to interfere with the period imposed. Mr Tomlinson accepted that a minimum period of 50 per cent of the finite sentence was appropriate. There is no basis to interfere with the slightly longer minimum period imposed by the Judge.

Result

[23] The appeal against sentence is dismissed.