

NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011.

NOTE: DISTRICT COURT ORDER PROHIBITING PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF WITNESSES/VICTIMS/CONNECTED PERSONS PURSUANT TO S 202 CRIMINAL PROCEDURE ACT 2011 REMAINS IN FORCE.

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA454/2021
[2022] NZCA 113**

BETWEEN MASON RAMIERAZ MINES
Appellant

AND THE QUEEN
Respondent

Hearing: 22 March 2022
Court: Collins, Thomas and Mallon JJ
Counsel: K J Gray and N Pointer for Appellant
M N Zarifeh and P N M Brown for Respondent
Judgment: 6 April 2022 at 9.30 am

JUDGMENT OF THE COURT

- A The application to adduce further evidence is granted.**
B The appeal against sentence is dismissed.
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REASONS OF THE COURT

(Given by Collins J)

Introduction

[1] Mr Mines appeals a sentence of three years and 10 months' imprisonment imposed by Judge M J Callaghan in the District Court at Christchurch.¹

[2] The sentence was imposed after Mr Mines pleaded guilty, six days before trial, to:

- (a) three charges of sexual violation by unlawful sexual connection; and
- (b) three charges of performing an indecent act on a child under 12.

Five of those charges were representative. Mr Mines was also sentenced to a concurrent term of 15 months' imprisonment on two charges of committing an indecent act on a young person under 16.² He was found guilty of those two charges following a trial in the District Court.

Background

[3] Mr Mines' offending against the first two victims, AH and SM, was set out in the summary of facts that Mr Mines accepted when he pleaded guilty.

Offending against AH

[4] When AH was eight to nine years of age, she stayed during school holidays at the address where Mr Mines lived. During those visits, Mr Mines would touch AH's vagina on an almost daily basis. This offending included digital penetration. Mr Mines also coerced AH into masturbating him and performing oral sex on him. Although the offending started when Mr Mines was 13 years old, the charges concerned events that occurred after he turned 14 years of age.

¹ *R v Mines* [2021] NZDC 14314 [Sentencing notes] at [44].

² At [44(c)].

Offending against SM

[5] SM also stayed during school holidays in the home where Mr Mines lived. When SM was between eight and 11 years of age, Mr Mines made her masturbate him approximately 20 times. He also penetrated SM's vagina with his fingers on each occasion she stayed at his home. The offending against SM also started when Mr Mines was 13 years old, but the charges only concerned his offending after he turned 14.

Offending against FM

[6] The evidence at trial was that Mr Mines touched the breasts of FM, his relative, and on another occasion, he touched her genitalia. At the time, Mr Mines was 20 years old and the victim was 14 years old.

Sentencing decision

[7] The Judge assessed the offending against AH and SM as being at the lower end of band two in *R v AM*³ and warranted a starting point of seven and a half years' imprisonment.⁴ In reaching that assessment, the Judge took into account the effect of Mr Mines' offending on each of the victims. In their victim impact statements AH and SM spoke about the trauma and anxiety they have suffered as a consequence of Mr Mines' offending. The Judge said:⁵

... the prolonged nature of the offending and the fact that it involved digital penetration and oral penetration, the effects that it has had on the victim and the repeated nature of it, it clearly puts this into band two of *AM*. I however accept the submission made by your counsel that it is at the lower end of that band.

[8] In relation to the offending against FM, the Judge referred to the fears and anxiety she has suffered as a result of Mr Mines' offending. The Judge adopted an additional 15 months' starting point after taking account of the fact Mr Mines took

³ *R v AM (CA27/2009)* [2010] NZCA 114, [2010] 2 NZLR 750 at [90].

⁴ Sentencing notes, above n 1, at [36].

⁵ At [34].

advantage of FM's vulnerability, that he persisted with his offending despite her protests and the "skin on skin" nature of the offending.⁶

[9] Judge Callaghan adjusted the overall starting point to seven years and nine months' imprisonment to reflect the principle of totality in s 85 of the Sentencing Act 2002.⁷

[10] From the adjusted overall starting point, the Judge made the following deductions:

- (a) 30 per cent to reflect Mr Mines' age at the time of the offending;⁸
- (b) 15 per cent to reflect the guilty pleas to the charges of offending against AH and SM;⁹ and
- (c) five per cent to reflect Mr Mines' personal circumstances, including his psychological disorder (ADHD) and his remorse.¹⁰

[11] These deductions produced the end sentence of three years and 10 months' imprisonment.¹¹

Grounds of appeal

[12] In her submissions in support of the appeal, Ms Gray argued that the Judge erred when adopting a starting point of seven and a half years' imprisonment for the offending against AH and SM and that a starting point of seven years' imprisonment was appropriate for that offending.

[13] Ms Gray also submitted that the deductions made in this case were insufficient in light of fresh evidence set out in a psychological report prepared by Mr Neilson,

⁶ At [37].

⁷ At [38].

⁸ At [39].

⁹ At [42].

¹⁰ At [41]. The sentencing notes are potentially ambiguous on whether remorse was a factor in this discount, but both parties have accepted that it was a factor, and we will treat it accordingly.

¹¹ At [43].

which Ms Gray submitted provided a credible explanation as to why Mr Mines' background caused him to have reduced moral culpability for his offending.

Crown position

[14] Ms Brown, who argued the case for the Crown, submitted that the starting point adopted by the Judge was within range and that the discounts, which totalled 50 per cent were also within range.

[15] The Crown responsibly accepted the report from Mr Neilson ought now be considered by us, and we grant leave for it to be adduced.¹² Ms Brown acknowledged Mr Neilson's report contained more information than was previously known by the District Court about Mr Mines' background. Notwithstanding the further information contained in the psychological report, Ms Brown submitted that the overall discount of 50 per cent adopted by the District Court Judge was appropriate and that any further adjustments to reflect the contents of Mr Neilson's report would constitute "tinkering".

Analysis

Starting point

[16] We disagree with Ms Gray's criticisms of the starting point of seven and a half years' imprisonment adopted by the Judge in relation to the offending against AH and SM. We make the following points:

- (a) While the sexual abuse commenced when Mr Mines was 13, his offending continued through to when he was 16.
- (b) The victims were very young (AH aged eight to nine and SM aged eight to 11) and vulnerable, not only because of their ages but because they were staying at Mr Mines' home, away from their own families.
- (c) The offending involved significant breaches of trust by Mr Mines.

¹² An application was made to the District Court to adjourn sentencing pending the obtaining of Mr Neilson's report. That application was declined because one or more of the complainants had already travelled to Christchurch to attend the sentencing hearing.

- (d) The offending was persistent, hence the representative charges, and occurred over a timeframe that was close to two years.
- (e) The offending involved coercing AH into performing oral sex on him.
- (f) The offending that involved digital penetration occurred after Mr Mines had turned 14.
- (g) The harm suffered by the victims was significant. They have suffered anxiety and emotional trauma because of Mr Mines' offending.

[17] Although there is only one charge that placed Mr Mines' offending into band two of *R v AM*,¹³ that charge was a representative charge.

[18] We also agree with the starting point of 15 months' imprisonment adopted in relation to the offending against FM. At the time of that offending, Mr Mines was 20 years old and his victim, who was 14, was very vulnerable.

[19] No issue was taken with the adjustment to the starting point to reflect the totality principle in s 85 of the Sentencing Act.

Adjustments

[20] We also disagree with Ms Gray's argument that the adjustment of 30 per cent was light given Mr Mines' age when most of the serious offending occurred. The adjustment of 30 per cent for Mr Mines' age was within the range that was reasonably available, particularly as he went on to offend against FM when he was 20 years old.

[21] The deduction of 15 per cent to reflect Mr Mines' guilty plea was generous because:

- (a) The guilty pleas did not apply to the charges of offending against FM.

¹³ *R v AM*, above n 3.

- (b) The guilty pleas were entered just six days before the trial date at a time when AH and SM would have been preparing themselves for the trial.

A discount of 10 per cent in these circumstances would have been unimpeachable.

[22] The key issue is whether any further deduction should be made in light of the matters contained in Mr Neilson's report after having regard to the five per cent discount already given for Mr Mines' mental health issues and his remorse.

[23] Mr Neilson has expanded upon the information that was available to the District Court Judge and explained:

- (a) Mr Mines' father abused him and his mother abrogated her responsibilities to properly care for Mr Mines.
- (b) In addition to suffering ADHD, Mr Mines suffers anxiety.
- (c) Mr Mines was sexually abused by an older brother and, in Mr Neilson's view, this was likely to have played a role in Mr Mines' sexual abuse of the victim.

[24] In our assessment, while the matters contained in Mr Neilson's report might have led to a greater discount being applied, had that report been available to Judge Callaghan, any additional discount would have been relatively minor. A discount of 10 per cent would have been the upper bounds of any discount that took into account all of Mr Mines' personal circumstances in addition to his guilty plea and youth, but that would have resulted in an end sentence in the vicinity of three years and six months' imprisonment.

[25] When assessing the end sentence, we have compared the sentence imposed on Mr Mines with cases that are generally comparable, although, we acknowledge, no two cases are ever identical. In *V (CA400/2012) v R*,¹⁴ a sentence of four years and nine months' imprisonment was adopted by this Court in relation to a young man who

¹⁴ *V (CA400/2012) v R* [2012] NZCA 465.

also pleaded guilty to offending that occurred when he was aged between 14 and 17. The offending in that case was against a very young victim, but involved very similar offending to that perpetrated by Mr Mines against AH and SM. There are also similarities between Mr Mines' offending and the case of *BB (CA732/2012) v R*,¹⁵ where this Court considered to be generous a sentence of four years and five months' imprisonment for an appellant who was found guilty of offending against his two stepsisters. Again, the offending was similar to Mr Mines' offending against AH and SM.

[26] This Court has consistently maintained that it is only appropriate to intervene in a sentence if the sentence under appeal is "manifestly excessive" and not justified by relevant sentencing principles.¹⁶

[27] When we assess the actual sentence against the sentence that might otherwise have been imposed, we are satisfied that the sentence of three years and 10 months' imprisonment was within the range reasonably available and not manifestly excessive.

[28] When we assess Mr Mines' offending and take into account the deductions that can be properly made in this case, we are satisfied that the sentence imposed in this case was appropriate.

Result

[29] The application to adduce further evidence is granted.

[30] The appeal against sentence is dismissed.

Solicitors:
Crown Solicitor, Christchurch for Respondent

¹⁵ *BB (CA732/2012) v R* [2013] NZCA 139.

¹⁶ *Ripia v R* [2011] NZCA 101 at [15]; and *Tutakangahau v R* [2014] NZCA 279, [2014] 3 NZLR 482 at [36].