

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE**

**CRI-2017-044-003841
[2018] NZHC 2448**

THE QUEEN

v

MARTIN HENRY LAWES

Hearing: 18 September 2018
Appearances: R McCoubrey for the Crown
D P H Jones QC for the Defendant
Sentence: 18 September 2018

SENTENCING NOTES OF WYLIE J

Solicitors/counsel:
Crown Solicitor at Auckland
D P Jones QC, Auckland

Introduction

[1] Mr Lawes, you appear for sentence today having entered guilty pleas to five charges. The details are as follows:

- (a) three charges of entering into a dealing involving a person under 18 for the purposes of sexual exploitation. One charge covers the period January to December 2015, another the period 16 June to 10 July 2016, and the third 1 November 2016 to 21 July 2017. Entering into a dealing involving a person under 18 for the purposes of sexual exploitation is an offence pursuant to s 98AA(1)(a)(i) of the Crimes Act 1961. Each offence is punishable by a maximum penalty of 14 years' imprisonment;
- (b) a representative charge of knowingly being concerned in the importation of objectionable publications between March 2013 and July 2017. This is an offence pursuant to s 209(1A)(a) of the Customs and Excise Act 1996. It is subject to a maximum penalty of 10 years' imprisonment;¹ and
- (c) one charge of being in possession of objectionable publications on 28 September 2017. This is an offence pursuant to s 131A(1) of the Films, Videos, and Publications Classification Act 1993. Until 7 May 2015, the maximum penalty was five years' imprisonment. The penalty has since been increased by Parliament to a term of imprisonment not exceeding 10 years, or a fine not exceeding \$50,000.²

[2] You entered your pleas on 3 August 2018 before Lang J after I had given you a sentence indication on 27 July 2018.³

¹ Customs and Excise Act 1996, s 209(5)(a).

² Films, Videos, and Publications Classification (Objectionable Publications) Amendment Act 2015, s 6.

³ *R v Lawes* [2018] NZHC 1891.

Factual background

[3] The offending was committed by you through the use of computers at your home in suburban Auckland. You live streamed children being sexually exploited and abused; you downloaded objectionable material via the internet and you kept some of the material on your home computers.

[4] According to the summary of facts, the live streaming of child sexual abuse via the internet involves a perpetrator who can direct the abuse of children through video sharing platforms, and watch the abuse he or she has directed being carried out. The abuse can be tailored to the requests of the perpetrator. It can also be recorded and further disseminated through what are known as dark net sites and peer to peer internet networks. Traditionally, the victims of live stream child sexual abuse have been children in South East Asia, and in particular, in the Philippines. More recent reports suggest that the live streaming of the sexual abuse of children is now spreading to other countries, in particular to countries where there are high levels of poverty, limited domestic child protection laws and easy access to children who can be targeted by adult offenders.

[5] The summary of facts is lengthy and detailed. I summarise the main matters as follows:

- (a) You used aliases to create yahoo email accounts. Using these aliases and these accounts, you made contact with several other yahoo account users based in the Philippines. Using the yahoo chat facility, you would communicate with women who you would instruct to perform various sexual acts on webcam for your gratification. You would watch these performances on your computer in your home. In return for the performances, you would send money to the people you were dealing with through third party money remitters.
- (b) Between 2008 and 2017, you transferred approximately \$100,000 to third parties in the Philippines.
- (c) Following an international multi-agency investigation in November 2015, five adults were arrested in the Philippines. They were running

a child sex ring which involved live streaming child sexual exploitation and abuse. As a result of the arrests, 12 female complainants aged between seven and 19 years old were rescued; 11 of the complainants were aged under 15 years.

- (d) You had made 36 payments to accounts held in the names of three of the five leaders of the child sex ring, totalling \$2,472.
- (e) Your computers were seized in September 2017. They were forensically analysed. You acknowledged that they were your computers, that you used them, and that you were the owner and user of the various relevant email addresses. A number of objectionable publications were found on the computers. They had been imported by being downloaded from the internet.
- (f) You voluntarily gave the police access to your yahoo account on 29 September 2017. It has been forensically examined. Analysis revealed email communications between the aliases adopted by you and other yahoo account users. A number of the emails sent to you had digital media files attached. Many of the media files contained images of pre-pubescent and young teenage children exposing their genitalia, engaging in sexual acts with other children, and being sexually abused.
- (g) You had email conversations with the sender or senders of some of the emails on various dates between March 2013 and July 2017, and you downloaded objectionable images to your computer. Various requests were made to you to send money to the person or persons sending the images. For present purposes, it is said that, in total, 59 images or videos were downloaded. They mainly showed pre-pubescent girls posing naked and/or being sexually abused. Some of the images showed the girls involved in sexual intercourse and oral sex.
- (h) During the period 1 January 2015 to 31 December 2015, you made 570 money transfers totalling \$22,522 to recipients in the Philippines. Each transaction was a payment for a live stream show. Some of the shows

involved only adults, but several involved children aged between seven and 17 years. Typically, the live stream child sexual abuse shows would involve one or more children performing sexual acts on themselves or on one another. During the live stream shows, you would direct what you wanted the children to do by giving instructions by electronic instant messaging. It is clear from some of the electronic conversations that you were aware of the ages of at least some of the children involved.

- (i) Between 16 June 2016 and 10 July 2016, you communicated via the yahoo chat platform with another user. The user was an adult female. Over this period, she performed sexual acts on young females under 18 years for you and at your direction.
- (j) You created a skype account using the same alias. Between 1 November 2016 and 21 July 2017, you communicated with another skype user, who used the screen name "Donna". During this period, you and Donna communicated more than 6,000 times in messaging and related emails. Donna, in return for payment, or promises of payment, from you, shared photos and live streamed videos of her own children, believed to be aged three, four and seven years, as well as her neighbour, a girl aged 13 years. The photos and videos depicted sexualised posing by each of the children. At no stage did you ask Donna to stop sending the objectionable images.
- (k) Much of the messaging had been deleted from your computers, and instructions to delete messages had been given by you to Donna.
- (l) There were approximately 296 objectionable media files located on your computers. The files comprised electronic media or video files showing the sexual exploitation or abuse of children.
- (m) When you were spoken to by the police, you admitted the facts outlined in the summary of facts in relation to the 2015 offending. You stressed that you mostly viewed shows involving adults. You said that the

amount of money sent by you to those involved was not a significant sum to you, as you were a multi-millionaire. You also stated that you were helping the people involved by giving them money as they were living in poverty, and that you believed that you were being exploited by the people you dealt with in the Philippines, rather than that you were exploiting the children involved.

Pre-sentence report

[6] I have received a pre-sentence report since I gave you the sentence indication. You have recently turned 75. You have been married for some 23 years to your current wife, and you have two children from a previous relationship and grandchildren. Some of your family members are still supportive of you. Others are not.

[7] The report writer records that you accept your offending and in explanation say that from the year 2000 onwards, you were experiencing an increase in work pressures, which resulted in an ongoing lack of sleep. You said that you started accessing a chat forum after a work day to speak to Asian women of appropriate age and that things just spiralled until you were accessing objectionable images of children. You said that you had not gone looking for images of children, but you accept that over time you viewed such images for sexual gratification. You expressed immense disappointment with yourself for doing so.

[8] The report writer considered that you displayed regret for your actions, and the impact on yourself and your family. It was noted that you have had an accomplished career, working for a multi-national corporation, and later becoming chairman of a local Council board. It was noted, however, that your risk of reoffending is moderate, given that your offending started later in life, that it occurred over a lengthy period, and that you only ceased the behaviour when you were caught. The report writer noted that you have been undertaking private psychological treatment over the past few months, but expressed the view that that will not provide you with the intense rehabilitation you need to address your offending related factors.

[9] A sentence of imprisonment was recommended.

Submissions

[10] Both counsel accepted that the sentence imposed on you has to hold you accountable for what you have done and promote in you a sense of responsibility. It is clear from your police interview that, at least at that stage, you accepted no responsibility at all.

[11] It was also common ground that the sentence imposed should denounce your conduct, deter others from similar offending, but nevertheless be the least restrictive outcome that is appropriate in the circumstances. It must also take into account your personal circumstances, and be a sentence that is likely to assist in your rehabilitation.

[12] Mr McCoubrey, for the Crown, submitted that a starting point in the region of six to seven years' imprisonment is appropriate for the lead offending – namely the charges of entering into dealings involving persons under 18 for the purposes of sexual exploitation. He argued that, were the importation and possession charges to be sentenced on their own, they would attract a starting point in the vicinity of three years' imprisonment, and that adjusting for totality, an overall starting point for all of the offending should be in the region of eight to nine years' imprisonment. He accepted that a discount of 25 per cent is available for your guilty pleas. He noted that you will be required to be registered on the Child Sex Offender Register, pursuant to the Child Protection (Child Sex Offender Government Agency Registration) Act 2016.

[13] Mr Jones QC, appearing on your behalf, accepted that imprisonment is the only appropriate sentence. He, however, submitted that the starting point proposed by the Crown is too high, and that it seeks to inappropriately elevate your culpability. He argued that a starting point of no more than four years' imprisonment is appropriate for the lead charges, that the remaining charges should attract a starting point of no more than 18 months' imprisonment as stand-alone charges, and that applying the totality principle, the appropriate cumulative starting point should be no higher than five years' imprisonment for all offences. He further submitted that a discount of up to 20 per cent is warranted to recognise your age, poor health, previous good character and contribution to the community, and that you are entitled to a further discount of 25 per cent for your guilty pleas. He accepted that registration on the Child Sex Offender Register must follow.

[14] Since I gave you the sentence indication, I have received further supplementary submissions from Mr Jones. He now argues that you should be entitled to an additional discount to reflect your cooperation with the police in providing them with authority to access and use your yahoo account so that those involved in the Philippines could be identified and contacted. He also made available to me a copy of the psychologist's report which has resulted from your recent treatment. He also explained that you have very recently paid \$45,000 to two charities that help children – particularly those who have been the victims of sexual exploitation. He asked me to take these matters into account, and give you further discounts.

[15] I deal with these issues shortly.

Analysis

Dealing for purposes of sexual exploitation

[16] I agree with counsel that the lead charges are the dealing for the purposes of sexual exploitation charges. The section creating this offence has only been introduced into the Crimes Act relatively recently, and it covers a very wide range of offending.⁴ There is no guideline authority and there are but a few other cases which assist in determining the appropriate sentence.

[17] In my judgment, there are a number of aggravating features to your offending which are relevant to the starting point:

- (a) First, the victims were young. While the involvement of a youthful victim is inherent in the offence, here the victims were very much younger than the 18 years specified in the section. The victim in the case of charge two was 12 years old; charge three simply asserts that the victim was under the age of 18; while in the case of charge four, the victims were three, four, seven and 13 years old. It is clear from the email correspondence in relation to charge two that you were aware of the age of the victim. It also seems that you were aware of the age of the 13-year-old victim the subject of the offending in charge four. The age of the other victims must have been obvious from their physical

⁴ Crimes Amendment Act 2005, s 6.

appearance. In my judgment, the victims were particularly vulnerable given their age. This is a relevant aggravating feature pursuant to s 9(1)(g) of the Sentencing Act 2002.

- (b) Secondly, the victims had other vulnerabilities – they were in the Philippines and you were aware of this. You were paying money to direct and view the sexual exploitation of the victims. You knew that the children were in a developing country, where poverty is a major issue. You were exploiting their poverty and their situational vulnerability.
- (c) Thirdly, I agree with the Crown that I can properly infer that there was considerable, and likely permanent, harm to the child victims. It is apparent from the examples of the electronic messages set out in the summary of facts that the abuse to which the children were subjected at your direction was very much at the higher end. It was degrading and dehumanising. I agree with the Crown submission that you were paying to have the children used as toys. This is a relevant aggravating feature pursuant to s 9(1)(d) of the Sentencing Act.
- (d) Fourthly, there was premeditation involved. Your offending was not opportunistic. You had the computers. You set up the aliases and the email accounts. You arranged the money transfers to the persons physically exploiting and abusing the children. Premeditation is a relevant aggravating feature pursuant to s 9(1)(i) of the Sentencing Act.
- (e) Finally, there is the extent of the offending. There were a large number of money transfers to the Philippines. There were also a very large number of emails and other electronic messages exchanged. I accept that not all of these transfers and emails were related to the offending to which you have pleaded. The offending nevertheless appears to have taken place over a number of years. It was repetitive and persistent.

[18] There is one mitigating factor of the offending. There is no suggestion that you recorded the live stream shows, or that you disseminated them to other persons.

[19] In order to assist in determining where the appropriate starting point lies, I have considered such limited authority as there is:

- (a) In *R v Hore*,⁵ Lang J sentenced an offender who had pleaded guilty to two charges of obtaining credit by deception, two charges of blackmail, six charges of sexually exploiting young persons under the age of 18 years and one charge of attempted sexual violation. The defendant began to offer his victims money in exchange for having them perform sexual services for him. These included having his victims masturbate in front of him online. There were 11 victims, aged between 11 and 19 years of age. The defendant was never in a position to pay any of the victims any of the money promised. Lang J noted that: “context is everything and it is not possible to derive a great deal of assistance from [other sentencing decisions] because in this area each case is so very different”.⁶ Lang J took as an appropriate starting point for the offences of sexual exploitation, attempted sexual exploitation and obtaining by deception, a sentence of five years’ imprisonment.⁷
- (b) In *R v Ellmers*,⁸ the offender pleaded guilty to some 57 charges involving sexual offending against children and the possession and supply of objectionable material. The offender was charged with one charge of entering into a dealing for the purpose of sexual exploitation and one charge of attempting an indecent act on a child under 12. The police had intercepted online communications between the offender and the father of an 18-month-old infant. The father of the infant had posted a message online offering to trade his infant son and indicating that he preferred girls. The offender arranged to pay \$500 in exchange for access to the son for sexual gratification. The intended conduct was for the offender to engage in “general boy love” and rub his penis between the infant’s buttocks. When the offender travelled to the agreed meeting place, he was met by an undercover police officer

⁵ *R v Hore* [2012] NZHC 1575.

⁶ At [15].

⁷ At [17].

⁸ *R v Ellmers* [2013] NZHC 1021.

posing as the infant's father, and he was arrested. In the High Court, I dealt with this aspect of the offending by imposing an uplift of five years' imprisonment to arrive at an end sentence of preventive detention with a minimum period of imprisonment of 20 years. The case went on appeal. On appeal, the only alteration made by the Court of Appeal was to reduce the minimum period of imprisonment from 20 years to 15 years.⁹

- (c) In *R v Sehgal*,¹⁰ the defendant pleaded guilty to three charges of dealing with a person under the age of 18 years for the purposes of sexual exploitation, in addition to a charge of receiving earnings from commercial sexual services provided by a person under the age of 18 years. The defendant had become involved in a relationship with the victim's mother, and provided her and the remaining members of the family with financial support. Shortly before the victim's 15th birthday, the mother told her that she would be required to engage in prostitution so the family could meet its needs. The victim's first client was on her 15th birthday, and over the next 18 months, she was required to have sex on approximately 1,000 separate occasions, sometimes with multiple clients during the course of a day. The defendant's involvement in the offending included the use of his bank accounts, depositing cash derived from the provision of sexual services into the account, taking approximately \$60,000 relating to the offending to reflect the rewards derived from the offending, paying advertising agencies for advertisements that were placed in relation to the offending, discussing with the victim's mother the wording to be used in the advertisements, and driving the victim to motels and the clients' homes for sexual liaisons to take place. The Court imposed a starting point of five years and nine months' imprisonment for this offending.¹¹

⁹ *Ellmers v R* [2013] NZCA 676.

¹⁰ *R v Sehgal* [2018] NZHC 1145.

¹¹ At [22].

- (d) In *R v Nelson*,¹² the defendant pleaded guilty to a number of charges relating to sexual offending against children. He was found guilty at a Judge-alone trial of a further 33 charges, including six charges of dealing with people under the age of 18 for the purposes of sexual exploitation. Most of the defendant's offending from about 2007 onwards involved him convincing vulnerable young men, many of whom were under the age of 18, to become involved in a prostitution and pornography business the defendant falsely told them that he owned and was running. The defendant used this lie as a ruse to dupe the young men into placing themselves in compromising situations where he could offend against them. I took charges of rape and unlawful sexual connection as the lead offences. With regard to the offence of dealing in people under the age of 18 for the purposes of sexual exploitation, I stated as follows:

[89] I now turn to the charges of dealing in people under the age of 18 for the purposes of sexual exploitation. This involved charges 20, 21 and 22 against G, charge 34 against KB, charge 37 against R, and charge 51 against M. Two of the charges against G – charges 21 and 22 – were representative charges. Each of the victims was under the age of 18, vulnerable and desperate. You convinced each that you ran a fictitious pornography and prostitution business. You promised them money. You induced them to undress and perform sexually explicit acts, while you photographed and videoed them. Although each consented to the photography and filming, the consent was induced by false promises made by you. There was significant pre-meditation and planning by you in order to persuade your victims that you had a prostitution and pornography business. Your victims were vulnerable. The victim impact statements make it clear that you have inflicted significant harm on your victims. You breached the trust of many of them, by allowing them to live in your home, but only so that you could exploit their vulnerabilities. The scale of your offending is significant. You took a large number of photographs and videos. The offending against the four victims spanned a period of years and you used this offending as a platform to go on and further offend.

I commented that the offending there in issue was more serious than that in *R v Hore*, and indicated that I would adopt a starting point of

¹² *R v Nelson* [2016] NZHC 2963. The Court of Appeal dismissed the appeal against sentence in *Nelson v R* [2017] NZCA 407.

eight years' imprisonment for all of this offending together, and a sentence of five years' imprisonment on each offence, if I was sentencing the defendant on a stand-alone basis for each offence.¹³

[20] The Crown submitted that your offending is more serious than that in *Hore*, *Ellmers* and *Sehgal*. Mr McCoubrey noted that your victims were very young indeed, and that they were required to perform or become involved in sexual acts at your direction. He also noted that there were a large number of victims over the period 2015 to 2017. He argued that the sheer volume of the communications involved is testament to the scale of the offending, and that there were a large number of money transfers made by you to the Philippines over the relevant period.

[21] Mr Jones submitted that your offending is less serious than that in *Hore*, *Ellmers* and *Sehgal*. He argued that you did not initiate contact with the children, but rather that you engaged in discussions online with adults, who then offered you the services of the children. He argued that it was the childrens' parents who initiated the exploitation and controlled the children, whereas in *Hore*, *Ellmers* and *Nelson*, the offenders initiated direct contact resulting in the exploitation of the children involved in their offending.

[22] In my view, the offending which you have committed is more serious than that in *Hore*, *Ellmers* or *Sehgal*. It is closer to, but distinct from, the offending in *Nelson*. It is significant that a number of the children involved in your offending were very young. Further, the volume of the offending places your case in a very different category than the offenders in any of the earlier cases. I do not accept Mr Jones' submission that it was the childrens' parents or family members who initiated the exploitation and controlled the children. It was you who engaged in email contact with the parents or family members. At no time did you seek to extract yourself from the situation. You directed what was to be done and secured what you wanted through the payment of money. The children were abused and exploited at your direction, and for your gratification. But for anonymous voyeurs prepared to pay for such services, the trade of dealing in young people and vulnerable children for sexual exploitation would not exist. It makes no difference to the child victims that they were being

¹³ At [90].

abused at the direction of a faceless and unknown person in a far-away country – they were still being abused. In my judgment, the offending is serious offending of its kind. I adopt a starting point of eight years’ imprisonment for these three charges.

Objectionable publications – importing and possession

[23] For present purposes, there were 59 images imported, and you were in possession of 296 images. I do not understand why there is a discrepancy. Perhaps it is explained by the fact that the importation charge is a representative charge.

[24] In the United Kingdom, there are guidelines for sentencing for similar offences.¹⁴ Those guidelines were updated and reissued in 2014. They assign various types of offending a category, and suggest a starting point and sentencing range for each category.

[25] The guidelines have been treated as being a useful guide for sentencing in New Zealand.¹⁵ Some caution, however, is required, given that our Parliament has doubled the maximum penalty for the offence of being in possession of objectionable material. This must be taken as an indication of Parliament’s view of the seriousness of this type of offending.¹⁶

[26] Under the United Kingdom guidelines, 13 of the 59 images imported by you were category A images – that is images involving penetrative sexual activity or images involving sexual activity with an animal or sadism; 17 were in category B – images involving non-penetrative sexual activity; 29 were in category C – indecent images, which do not fall within either categories A or B. For the possession charge, six of the images were in category A, 112 were in category B and 178 in category C.

[27] The United Kingdom guidelines do not directly cover importation. The Crown submitted that the appropriate United Kingdom guideline is that for the “production” of such images. I do not accept this submission. I agree with Mr Jones that there is nothing in the summary of facts to suggest that you were involved in the production

¹⁴ Sentencing Council for England and Wales Sexual Offences: Definitive Guideline (December 2017).

¹⁵ *R v Zhu* [2007] NZCA 470 at [15]; *Petersen v Department of Internal Affairs* [2014] NZHC 2024 at [16]-[17]; *Tilyard v Police* [2016] NZHC 1377 at [10].

¹⁶ *R v Stevens* [2016] NZHC 1574 at [23].

of the images. Rather, it seems that it was either the parents of the victims, or those who controlled the victims, who took the images and sent them to you. You do not seem to have ordered the images. Further, there is nothing to suggest that you further disseminated the material which you imported. As a result, the United Kingdom guidelines are of little help in the present case, although they still offer some limited assistance with the possession charge.

[28] I have considered the various cases referred to me by the Crown and Mr Jones' comments in regard to each of these cases.¹⁷

[29] I agree with Mr Jones' observation that the decided cases are of relatively little help. Most involved a much larger number of images and in some of the cases, the images were much more concerning – they portrayed sexual violence against infants, bestiality and the like.

[30] The Crown submitted, and I agree, that it is not possible to arrive at a starting point for such offending “by mathematical means”. It is not a case of simple numbers or even of categorisation, although both are plainly relevant. I also agree with the Crown that it is not easy to discern a line of consistent authority in this area.

[31] I do not consider that your importation and possession offending is as serious as that discussed in any of the cases to which I was referred. You imported, and have been in possession of, a relatively small number of images. While some of the images were more objectionable than others, there was nothing of a highly concerning nature, for example, sexual violence or bestiality, and there is nothing to suggest that you further disseminated the images to other parties. I would adopt a starting point of two years' imprisonment for this offending.

[32] Counsel have referred me to s 132A(2) of the Films, Videos, and Publications Classification Act. That subsection sets out various matters the Court must take into account as aggravating factors when dealing with offending of this kind.

¹⁷ *R v Zhu*, above n 15; *Doran v Police* [2012] NZHC 468; *Hulme v R* [2012] NZHC 86; *Department of Internal Affairs v Ward* [2015] NZDC 19637; *Department of Internal Affairs v Dawson* [2015] NZDC 21604; *R v Stevens*, above n 16; *Tilyard v Police*, above n 15.

[33] It is accepted that the elements of the subsection exist in your case. However, all of the elements have already been taken into account by me in determining the appropriate starting point for this offending. I do not need to give further consideration to s 132A(2). Were I to do so, I would be double counting.

[34] The importation and possession of child pornography charges are a separate and distinct species of offending and these charges are serious in their own right.

[35] I would uplift my total starting point to one of ten years' imprisonment to recognise this additional offending.

Totality

[36] I have considered totality and whether or not a sentence of 10 years' imprisonment would result in a sentence which would be wholly out of proportion to the overall gravity of the offending.¹⁸ I accept that a starting point of ten years' imprisonment would be too harsh and that a lower starting point is more appropriate, to recognise your overall culpability for the offending. I reduce my starting point to one of eight years and six months' imprisonment.

Personal factors

[37] There are no aggravating factors relevant to you.

[38] There are mitigating factors.

[39] You are a first offender. Further, a large number of references have been provided to me by Mr Jones. I accept that you have demonstrated good character in the past, that you have been generous to many, and that you have donated tens of thousands of dollars to people in need. You have been involved in community groups and local affairs. You have shown both a commitment to, and contributed to, the wider community. You have also very recently donated \$45,000 to two charitable organisations which assist children who have been the victims of sexual exploitation. While one could be cynical about such a late payment, particularly given the attitudes you expressed when you were arrested, I accept that the payments are a form of

¹⁸ Sentencing Act 2002, s 85(2).

reparation and that it is a factor I am required to take into account.¹⁹ I allow you a discount of one year and three months to recognise these various matters.

[40] A discount of one year and three months would take the starting point to one of seven years and three months' imprisonment.

[41] Mr Jones also puts your age in issue. You have recently turned 75 years. Age can be a mitigating factor in sentencing.²⁰ A few days ago, Mr Jones made your recent medical records available to me. I accept that you have some ongoing medical issues. While there does not seem to be anything particularly pressing, I accept that your age and medical conditions will make a sentence of imprisonment more difficult for you. I allow you a further discount of six months for these matters.

[42] You have been consulting with a psychologist, and a comprehensive safety plan has been put in place. I am told that you are committed to ensuring that you develop greater insight into your conduct, so that you will pose no risk to anybody in the future. I was asked to allow you a discount for remorse.

[43] Mr McCoubrey submitted that something very dramatic indeed will have had to have changed to afford you any discount for remorse given your attitude in your police interview. I have read the psychologist's report. Relevantly, she noted that your engagement was initially superficial, but that you engaged with increasing depth as treatment progressed. I also note the comments in the pre-sentence report that the psychological treatment you have received will not have been sufficient to turn your behaviour around. I am not persuaded that you have shown any real remorse. Your initial reaction was one of entitlement and self justification. Your attempts to understand your behaviour, and your payments to make amends, are very late in the day and I suspect result from the distress you are experiencing as a result of your present situation. I decline to allow you a further discount for remorse.

[44] Mr Jones next submitted that you are entitled to a discount for cooperating with the police.

¹⁹ Section 9(2)(f).

²⁰ Section 9(2)(a).

[45] After you were arrested, you were interviewed by the police and then bailed to attend Court the following week. The day after your arrest, the officer-in-charge visited you at your home seeking your cooperation. The police wanted you to provide an authority at that point to allow them to access and use your yahoo account so that those in the Philippines could be identified. You were told that you were under no compunction to do so, and that you could obtain legal advice if you wished. You were presented with a form to sign that set out the details of what was proposed. You did not avail yourself of legal advice, but instead agreed then and there to assist the police as requested.

[46] As a result, the yahoo account was accessed. It was examined and substantive information was given to New Zealand Customs by the police. This, in turn, helped lead to the Philippine authorities identifying the offenders in that country. The Philippine authorities were also provided with a summary of the electronic forensic evidence obtained by the police from your computers. They conducted their own sting operation and as a result, in November 2017, one of the Philippine offenders and her husband were arrested and their three children were rescued. They are the children the victims of the offending the subject of charge 4.

[47] The Crown accepts that the New Zealand police became aware of the relevant information because of your cooperation. The Crown also accepted that the Philippines operation resulted at least in part from the information obtained from your computers.

[48] An offender who provides assistance to the authorities is entitled to have that factor taken into account when he or she is being sentenced.²¹

[49] In assessing the appropriate discount for this factor, I have taken into account the fact that the Philippines operation resulted from information gathered from your computers, and that you consented to the police using your online identity – which you did not have to do. There was, however, no personal risk to you in giving such cooperation as you gave. There is no likelihood that you will have to give evidence in the Philippines or go into a witness protection programme when you are ultimately

²¹ *Hessell v R* [2009] NZCA 450, [2010] 2 NZLR 298 at [23]; *Waihape v R* [2012] NZCA 425 at [22]-[26].

released from custody. Moreover, your assistance to the authorities was relatively modest. You simply provided your password to the New Zealand police and you allowed the New Zealand police to use your online identity.

[50] The Crown accept that you should be entitled to a modest discount for such cooperation as you gave. I agree. I am prepared to allow you a further discount of nine months to recognise this factor.

[51] Mr Jones submitted, and the Crown accepted, that you should be entitled to a reduction for your guilty pleas of 25 per cent – or 18 months' imprisonment. I agree that this is the appropriate discount. It follows that the end sentence is one of four years and six months' imprisonment.

Sentence

[52] Mr Lawes, will you please stand.

[53] In respect of each of the three charges of entering into a dealing involving a person under 18 for the purposes of sexual exploitation, I sentence you to a term of four years and six months' imprisonment. Those terms of imprisonment are to be served on a concurrent basis.

[54] In respect of the representative charge of knowingly being concerned in the importation of objectionable publications, I sentence you to a term of imprisonment of two years. This sentence is also to be served on a concurrent basis.

[55] In respect of the charge of being in possession of objectionable publications, I sentence you to a term of imprisonment of two years. This is to be served on a concurrent basis as well.

[56] It follows that the finite sentence I am sentencing you to is one of four years and six months' imprisonment.

Child Sex Offender Register

[57] Mr Lawes, I have imposed a sentence of imprisonment on you for being in possession of objectionable material, contrary to s 131A(1) of the Films, Videos, and

Publications Classification Act. I am required by the Child Protection (Child Sex Offender Government Agency Registration) Act 2016 to explain to you that you are now a registerable offender under that Act. As a result, you are now and will be on release subject to various reporting obligations, and to penalties for failing to comply with those obligations. The Registrar of the Court will give you written notice setting out these obligations and detailing those penalties. The Registrar will also give notice to the Commissioner of Police and to the Chief Executive of the Department of Corrections advising them that your name has been placed on the register.

[58] For some reason which is not obvious to me, the Act does not extend to the three charges of entering into a dealing involving a person under 18 for the purposes of sexual exploitation, nor does it extend to the representative charge of knowingly being concerned in the importation of objectionable publications. Why these matters have been omitted from the Act is not clear to me. It appears to be an omission which may perhaps require legislative amendment.

[59] Mr Lawes, you may stand down.

Wylie J